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**THE CHANGING NATURE OF EMPLOYMENT
RELATIONSHIPS AND ITS CHALLENGE FOR HEALTH
AND SAFETY LAW**

By

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of the University of Glamorgan for the degree of Doctor of Philosophy**

Submitted

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Declaration

This is to certify that, except where specific reference is made, the work described in this thesis is the result of the candidate. Neither this thesis, nor any part of it, has been presented, or is currently submitted, in candidature for any degree at any other University.

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DEDICATION

This work is dedicated to the memory of my mom who passed away last year without my seeing her and to the memory of the leader Muammer Al gaddafi. I also dedicate this work to my family who were a great source of encouragement and support for me.

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ABSTRACT

The thesis explores the challenges faced by health and safety law in the UK as a consequence of the continuous changes in the employment relationship. This primarily covers the growth of the different forms of non-standard work. Health and safety law developed through a number of socio-economic changes in the UK. It has moved from only covering particular areas and particular classes of workers in the nineteenth century to wider areas of occupational health and safety and to include more of those at work. The thesis sets out the issues surrounding non-standard work arrangements and how they might affect the application of health and safety law. Key case-law is examined and the legal changes in the area of health and safety carefully analysed.

Research has been carried out by others concerning the reasons for and extent of the changing nature of work as an indicator of the changes that took place in the labour market in general; but the research in this thesis concentrates on how the application of health and safety law is challenged by such changes. The central hypothesis of the thesis is that non-standard work by its very nature might put those who are employed under its various types at more risk than their counterpart standard workers. This hypothesis is developed and explored through the field-work. The field-work took the form of a postal questionnaire to workers in the UK in geographical areas selected for their differing characteristics together with some semi structured interviews which sought to introduce a qualitative data element to the quantitative data in order to enrich and elaborate upon the findings of the questionnaire.

Analysis of the completed and returned questionnaires revealed that in today's workplace the nature of risk has changed, with an increase in the psychological risk related to work. Both groups of standard and nonstandard workers suffered from stress-related illness. This illustrates the complexity of the concept of vulnerability and how that might challenge the application of health and safety law and affect its efficacy. A

number of unexpected issues surfaced through the field-work, such as that working in the different types of non-standard work were effectively involuntary for some of those who chose to work this way. The main reason for their decisions was to be able to provide for the family income as well as to have more control over work and the ability to combine work with other responsibilities including domestic duties. Despite the relatively low number of non-standard workers who participated in the postal questionnaire, it seems that they are in a better position than was hypothesized at the outset, before the field-work took place.

Analysis of the semi-structured interviews revealed that interviewees had considerable knowledge and awareness about their employer's general duties in terms of risk assessment and safety training in addition to other significant aspects. This applies to both standard and non-standard workers, which indicates the important improvement in the management of occupational health and safety. However, a serious issue was common to most of those who suffered accident and/or ill-health from both groups of standard of non-standard workers: not reporting their experiences to their employers. In addition, many of those workers did not seek legal advice following their accident and/or ill-health because of fear and uncertainty about their employers' reaction. The thesis concludes with some reflections on the effectiveness or otherwise of health and safety legislation.

LIST OF CONTENTS

ABSTRACT	iv
CHAPTER ONE: Introduction	1
1.1 Introduction.....	1
1.2 Research Questions.....	3
1.3 Review of Literature	3
1.4 The Method.....	13
1.4.1 Fieldwork Method	22
1.5 Ethical Consideration.....	26
1.6 Importance of the Study.....	26
1.7 Structure of the Study	27
CHAPTER TWO: The Ttraditional Protective Paradigm	30
2.1 Introduction.....	30
2.2 Historical Background to Health and Safety Law	31
2.2.1 Social and Economic Development and the Evolution of Legislative Thought	31
2.3 Early Legislation.....	32
2.3.1 Women and Children in the Industrial Revolution33	32
2.3.2 Factory Acts and Other Industries and Trades: Widening the Safety-net	39
2.3.3 Factory Acts and Non-textile Industries: New Focus on Health Issues....	41
2.4 A more Comprehensive Interest in the Health and Safety.....	44
2.5 The Robens' Report: Findings and Effects.....	47
2.6 Conclusion	50
CHAPTER THREE: Change: From Standard Work to Non-standard Work ...	52
3.1 Introduction.....	52
3.2 The Main Catalysts for Non-standard Work Arrangements	52
3.3 The Incidence of NSW and Its Main Categories	56

LIST OF CONTENTS

3.3.1 Part-time Work.....	59
3.3.2 Temporary Work.....	61
3.3.3 Fixed-term Contracts.....	63
3.3.4 Casual Workers	64
3.4 Non-standard Work and the Challenges for Health and Safety	66
3.5 The Controversy of Non-standard Workers.....	72
3.6 Conclusion	77
CHAPTER FOUR: The Current Legislative Framework to Safeguard Health and Safety in Today's Workplace.....	79
4.1 Introduction.....	79
4.2 A New Philosophy and a New Approach to Health and Safety at Work	80
4.2.1. The Legislative Framework	81
4.3 The Interrelationship Between the European Union and the UK	84
4.4 The Increasing Importance of Health and Safety at the EU Level	85
4.4.1 The EU Directives and Their Relevance to NSW.....	88
4.5 The Implementation of EU Law in the UK	89
4.5.1 New Areas and Challenges in the Field of Health and Safety Regulations..	90
4.5.2 The “Six-Pack” Regulations.....	91
4.6 Major Achievements of Modern Health and Safety Policy	99
4.7 Occupational Health and Safety at Work, ‘On-going Concern’	101
4.8 Conclusion	103
CHAPTER FIVE: Employer's Liability in Common Law.....	105
5.1 Introduction.....	105
5.2 The Tort of Negligence.....	106
5.2.1 The Legal Requirements of Tort of Negligence.....	107
5.2.1.1 The Existence of The Duty of Care.....	107
5.2.1.2 The Nature of The Employer's Duty of Care.....	111

5.2.2	Observation upon the Legal Requirements	115
5.2.3	The Breach	116
5.2.4	Causation.....	118
5.3	The Tort of Breach of Statutory Duty	119
5.3.1	The Scope of Protection in the Tort of Breach of Statutory Duty.....	121
5.3.2	The Pre-requisites of Liability.....	122
5.3.2.1	The Statute Must Provide a Ground for Civil Liability for Breach of a Statutory Obligation.....	122
5.3.2.2	Who Needs to Be Protected?.....	123
5.3.2.3	The Standard of Duty	125
5.4	Employment Contractual Liability	130
5.5	Conclusion	132
CHAPTER SIX: The Investigation into Workers' Experience of Health and Safety Issues in South Wales and Their Relative Impact on Standard and Non-standard Workers		134
6.1	Introduction.....	134
6.2	The Hypotheses.....	134
6.3	The Methodology.....	136
6.3.1	Quantitative Research (the Questionnaire)	137
6.3.1.1	Constructing the Sample for the Questionnaire	137
6.3.1.2	Encouraging a Good Response	138
6.3.1.3	Pilot Test	139
6.3.1.4	Timing	139
6.3.1.5	Constraints on the Research Regarding the Questionnaires.....	139
6.3.1.6	Analysis of Questionnaire Responses	140
6.3.1.7	Compensation and Liability Issues	160
6.3.2	Qualitative Research (Semi-structured Interviews)	162
6.3.2.1	Details of Interviews	164

LIST OF CONTENTS

6.3.2.2 Analysis of Interviews.....	165
6.3.2.2.1 Participants' Decisions about Working Patterns.....	165
6.3.2.2.2 The Impact of Work	166
6.3.2.2.3 Health and Safety Law in Practice Including European Legislation in the Area of Health and Safety- views of Respondents	167
6.4 Conclusion	169
CHAPTER SEVEN: Conclusion.....	171
7.1 Theoretical Analysis of Health and Safety Law	172
7.1.1. Health and Safety Law in Relation to Theories Examined in This Study.....	173
7.2 Health and Safety Law and NSWs.....	174
7.3 Further Research	176
7.4 The Way Forward	178
7.5 Reflections and Recommendations.....	179
Bibliography.....	183
Glossary of Terms.....	208
Annexure	210

CHAPTER ONE

Introduction

1.1 Introduction

“In all countries the changing world of work is leading to...an increase in non-standard work and employment contracts and changes in the composition of the workforce, with a higher percentage of older workers and women workers. The traditional hazard and risk prevention and control tools may be still effective but they need to be complemented by prevention strategies to anticipate, identify, evaluate and control hazards arising from the constantly evolving world of work which itself may be introducing new hazards.” (International Labour Organisation (hereafter ILO) 2011, p.1)

The central aim of this study is to explore changes in employment relationships and the implications for health and safety law, particularly the extent to which it protects non-standard workers. Although there is no universally accepted definition for non-standard work (hereafter NSW), it clearly includes casual work, seasonal work, part-time work, temporary agency work, fixed-term work, home-working, freelancing, contractors, gang workers and other types of NSW arrangements (Edwards, 2006). However, the focus of this research is narrower than the above definition of NSW, for reasons which will become apparent below (see page 28). Initially, the categories of NSW to be focused on, and actually dealt with in the questionnaires, were part-time work, self-employed work, fixed-term work, seasonal and casual work, temporary agency work and on call/stand by work. Two major areas were investigated: NSW was chosen as an indicator of the changing nature of employment relationships in the modern United Kingdom (hereafter UK), and how this has impacted upon, and challenged the efficacy of health and safety legislation. Following this, secondly, the research presents empirical data on the consequences of the rise of NSW on health and safety. The thesis also aims to explore how non-standard workers (hereafter NSWs) may become more vulnerable than their counterparts in standard employment.

In this context, the research reviews the literature that has analyzed the changes in the labour market in the UK over the last three decades, since the mid-1970s. Of the literature examined, most investigated extensively the growth of NSW as an important aspect of the changing nature and structure of the labour market and as a key factor for labour market flexibility (Atkinson, 1985 and 1984). However, when it comes to the exploration of the consequences of such changes, the available research, in most cases, has concentrated on the general economic and legal aspects of NSW (Bardasi and Francesconi, 2003, p. 1; Gallie, et al. 1998) and has not dealt with the health and safety implications. The present research goes into much more detail, considering the experience of people who have to live with the consequences of the law. This research will extend its investigation to include the human experiential facets of the research questions (see below 1.2) as well as undertaking a legal analysis. The growth of NSW is not without consequences for the workers concerned. This was demonstrated by studies carried out by the European Foundation for the Improvement of Living and Working Conditions (hereafter EFILWC) (Broughton, Biletta and Kullander, 2010) and other European institutions such as the European Agency for Safety and Health at Work (hereafter OSHA) which have shed light on the impact of NSW.

These studies investigated different types of NSW and their impact on health and safety. For example, OSHA, in one of its recent reports postulated that temporary workers in common with other workers are more exposed to increased risks (OSAH, 2009). The report presents the main issues regarding occupational safety and health. This will be further considered in Chapter 3 where the challenges of NSW will be discussed. In addition, the European Trade Union Institute (hereafter ETUI) stressed the consequences for restructuring of work and its impact on NSWs by stating: “Short-term workers (fixed-term, agency staff, casual and irregular workers, etc.) are not only at highest risk but also get least support of all the workers hit by restructuring” (Vogel, 2011, p. 18). The findings of such studies provide the springboard from which the present study seeks to investigate this important subject in greater depth.

1.2 Research Questions

The aim of the research is to examine the legal response, in the area of health and safety, to the changing nature of employment relationships. Thus, an important part of the research is to investigate the efficacy of health and safety law at work. The research questions posed are:

1. How has NSW by its very nature brought new challenges to health and safety law?
2. To what extent might NSW put those employed under its forms at greater risk and make them more vulnerable than their counterparts in standard employment?
3. How does the legal framework apply to the particular issues of NSW?
4. What improvements could be made?

1.3 Review of Literature

Work is still a fundamental organizing concept of society, thus the changing nature of work and employment attracts attention and contributions, not only from the field of academic law, but from a wide range of related disciplines in the humanities and social sciences, including philosophy, political science, economics, history and sociology. A review of the literature in relation to the changing nature of work and employment in general, and to NSW in particular will be presented here. This is necessary to examine in some detail a number of key concepts pertinent to this study. The research sheds a strong direct light on a specific facet of a very wide topic. The chosen facet to explore is the relationship between health and safety law and the situation and experience of NSWs. In preparation for this, various key pieces of legislation were examined in order to get a sense of the relationship between health and safety law in theory and practice. The law is designed to protect all those at work, whether employers, employees or self-employed, which can be seen from the wording of the Health and Safety at Work etc. Act (hereafter HSWA) 1974 and consequent legislation:

“It shall be the duty of every employer to ensure, so far as reasonably practicable, the health, safety and welfare at work of all his employees.” (Section 2(1) HSWA 1974)

The provisions of HSWA 1974 apply to every workplace and to all those at work, including NSWs:

“It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons *not in his employment* who may be affected thereby are not thereby exposed to risks to their health and safety.”(s 3 (1)); “It shall be the duty of every self-employed person to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that he *and other persons (not being his employees)* who may be affected thereby are not thereby exposed to risks to their health and safety” (s 3 (2)) (emphases added)

Important key secondary legislation was passed in order to protect particular forms of NSW; under the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (as amended by (Amendment) Regulations 2002) part-time workers must not be treated less favourably than full-time workers. Any treatment that puts part-time workers at a disadvantage could risk a complaint to an Employment Tribunal or it could lead to a claim of indirect sex discrimination because the majority of part-time workers are women. The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (hereafter FTC) give workers the right not to be treated less favourably than comparable permanent employees. Another important right available to those employed on FTC, under the Regulations, is that where an employer renews a FTC and the individual has been working for more than four years without any break in the continuity of their service, it will be deemed to become an indefinite contract. These Regulations for fixed-term work were enacted in order to implement the Council Directive of 1999 (1999/70/EC) on fixed-term work which supplemented measures to encourage improvement in the safety and health of workers with a fixed-duration employment relationship or a temporary employment relationship e.g., temporary agency workers such as bank nurses or peripatetic teachers.

Workers covered by these regulations are afforded the same level of protection regarding health and safety at work as standard workers. However, in practice, it seems that the law does not always succeed in protecting everyone (as will be discussed in Chapters 3, 4 and 5): virtually all employment protection legislation which emerged from the 19th century including that relating to health and safety, focused on permanent full-time, workplace-based employees (Leighton and Syrett, 1989). Casey (1988, p. 5) claimed that employment protection legislation bases many of the rights it accords to workers on the length of their service with their employers. To date there is still a lively debate on the changing nature of work and employment which indicates on-going concerns about how contemporary employment, represented by NSW, challenges legal and social systems (Conley, 2008). This was emphasised recently by Bell (2011, p. 254) when claiming that “The case law illustrates some of the difficulties facing litigants in enforcing equal treatment rights”. He urged a change in the law for part-time workers:

“There is a need to revise the Part-Time Workers Regulations in order to ensure that the rights contained therein can be enforced by all part-time workers; this requires a relaxation of the comparator requirement.” (Bell, 2011, p. 279)

Another type of NSW which has always been in existence although it has gained more attention in recent years is homeworking. Homeworking is covered by the key health and safety legislation including the HSWA 1974 and the so called ‘Six-Pack’ Regulations of 1992: Management of Health & Safety at Work Regulations (hereafter MHSWR) 1992; Manual Handling 1992; Display Screen Equipment (hereafter DSE) Regulations 1992; Personal Protective Equipment (PPE) Regulations 1992; Workplace (Health, Safety and Welfare) Regulations 1992 and Provision and Use of Work Equipment Regulations 1992, which were passed to implement the European Union (hereafter EU) Framework Directive of 1989. However, the same concern that was mentioned previously about part-time and fixed-term contract applies to homeworking. Lacking employment status might hinder those who are involved in homeworking from fully benefiting from the various pieces of health and safety legislation.

In 1996 the Health and Safety Executive (hereafter HSE) issued guidance on homeworking in an attempt to improve their situation (O'Hara, et al. 2004) (further discussed in Chapter 4). However, findings from different studies carried out in the UK showed that: "Both homeworkers and employers have not seen the guidance and are not familiar with health and safety legislation relevant to homeworking" (O'Hara, et al. 2004, p. 1). With the increase in homeworking some concerns are raised about it, regarding health and safety. According to O'Hara et al. (2004, P. 2) these concerns include poor seating; repetitive work and manual handling. Additional issues include the possibility of specific factors such as 'the presence of children'. Such issues concerning homeworking will be discussed in more detail in Chapter 3 of this thesis. New guidance was issued by the HSE in 2008 seeking to ensure that the current legislation and guidance are effective in protecting those found in homeworking (Great Britain: HSE, 2008). A further example of NSW which has witnessed an increase in the UK over the years is temporary agency work (see Chapter 3 below). Since the 1970s such workers have been subject to legislative protection including the Employment Agencies Act of 1973 through to the latest regulations which were introduced in October 2010 - the Agency Workers Regulations. These Regulations implemented the European Directive 2008/104/EC (AWD) of the European Parliament and of the Council of 19 November 2008 on temporary agency work. Under these regulations temporary agency workers are entitled to the same basic employment and working conditions as if they had been recruited directly, if and when they complete a qualifying period of 12 weeks in the same job (Department of Business Innovations and Skills: hereafter BIS, May 2011). This will be further considered in Chapter 4 of this thesis to assess the extent to which temporary agency workers are covered by the health and safety law in the UK.

Another example of a vulnerable group which might have been covered in this research is those working for gangmasters as labour providers. Many labour users in the UK depend on gangmasters to provide them with the labour they need for their businesses, particularly in industrial sectors such as agriculture, the shellfish collection and packaging industry and construction. Many of those workers supplied by gangmasters in the UK are supplied on casual and temporary bases (Great Britain: HSE, 2011). According to HSE, (2011, p. 1), it can be complicated in many cases to allocate the responsibilities for health, safety and welfare of workers between the gangmasters who supply them and the users who benefit from their work.

The UK Government has recently directed its attention to this area by enacting the Gangmaster (Licensing) Act (hereafter GLA) 2004, which established a Gangmasters Licensing Authority. The introduction of GLA 2004 was as a consequence of the death of 23 Chinese cockle pickers employed by a gangmaster, who were drowned at Morecambe Bay in Lancashire in 2004 (Strauss, 2010) which attracted national media attention. It is claimed, however, not all gangmasters are licensed and their workers would not be protected (Donaghy, 2009, p. 41). However, the empirical data gathered from this thesis did not yield any examples of that type of work, which was why they could not be included. It is important to note that NSW has always existed but over the last twenty years or so there has been an increase in its significance and extent in developed economies (Stone, 2006). Changes in labour markets are linked with significant changes to the structure and organisation of work. A study by McLaren (2004) considered how organisations are changing from providing tightly structured, stable and predictable jobs, to the development of different forms of working arrangements that are no longer characterized by certain features which used to be regarded as standard. These include full-time hours, a regular working week, access to non-wage benefits, having the legal status of employee, and being located in particular places. The study argued that the competitive nature of the global market, enhanced by the information age, has also had a profound effect on the incidence and growth of NSW. In other words, the changes in the pattern and nature of employment were seen as the inevitable outcome of structural changes in the economy driven by changing patterns of demand, both in the UK and worldwide; and by new production methods and increased domestic and international competition (Barrett and James, 1988). Interest in NSW has arisen within the context of many major changes in the structure of labour markets in all industrialized societies. This was well-illustrated in the case of the UK by Handy (1984, p. 68):

“New ways of work, new technologies and new attitudes to work are stirring a slow revolution in the ways in which work is organized in factories, shops offices and banks. The mile-long factory or the forty-storey office-sheds for people armies will one day soon look like memorials to an old civilization. No longer do you have to gather armies of people together in one place to get any quantity of work done.”

This was a result of a number of socio-economic and political changes. Sluggish economic growth in the 1980s triggered high unemployment that made it clear, especially in Europe, that economies were incapable of generating enough jobs to provide full-time employment

for all workers (Cordova, 1986). In the UK, considerable interest was generated in the opportunities for introducing new ways of organising labour, which loosened the contractual bonds between employer and employee; for example, through more extensive use of outsourcing (which refers to the process of contracting to a third-party), short term contracts, and teleworking where phones and computers can be used to perform different tasks (Hotopp, 2002) and temporary staff (Atkinson, 1985, p. 1). To explore the implications of the changing nature of employment relationships, it is crucial to look at how these changes happened and what was involved. That is to say, it is important to understand fully what the present research offers, to look beyond the surface and into the deeper changes that have led to the current patterns of work and employment in the UK. This will be at the heart of Chapter 3. The nature of work changed from labour-based industries to skill and knowledge-based industries, with greater requirements for specialists and professionals in organizations. New patterns were forming alongside the conventional full-time permanent employment. Most of the literature on the changing nature of employment relationships more readily defines NSW by what it is not, rather than by what it is (Cummings and Kreiss, 2008). According to Kalleberg (2000, p. 341),

“Flexible working is a general term and many phrases have been used to refer to these non-standard work arrangements. Examples are peripheral work, atypical employment, precarious work, alternative work arrangements, market-mediated arrangements, non-traditional employment relations, flexible staffing arrangements, vulnerable work, new forms of employment and contingent work.”

With the increase in the different forms of NSW, there is a need to address the classification and definition of employment relationships. A range of studies concerning the changing nature of work demonstrated the need for a broader understanding of the employment relationships: for instance Lewchuk, Clarke, and De Woolf, (2008 p. 389) have noted that:

“With the changing nature of work and employment, the time limited nature of many employment contracts, and shifting organizational forms-such as multi-employer sites and triangular employment arrangements in temporary agency work- require a re-thinking of our understanding of the employment relationship and the need to expand our understanding beyond a narrow employer-employee contractual framework.”

For Gash (2008) the issue is not confined to a narrow employer-employee contractual framework; labour legislation, occupational health and safety systems, and labour and social policies are only part of a broader socio-economic process in which employers and employees engage in the modern workplace. They move away from the notion of a contractual, defined employer-employee relationship within a formal workplace. In a recent article, Leighton and Wynn (2011, p. 6) make the point that the rigid criteria in law do not always correspond with what happens in practice, particularly for some types of NSWs such as agency workers:

“The legal tests for classifying employment relationships...are flawed and inefficient, being based on outdated employment norms from the 19th century and a law of contract arguably intrinsically unsuited to the analysis of increasingly diverse, complicated and dynamic employment relationships.”

They further argued that the application of the traditional legal tests including control, mutual obligations and economic reality which classify the employment relationships have negative effects on those who fall out of long-term contractual employment. For example, the relationship between employers and employees is more distant and tenuous in the case of agency workers. They have no direct relationship with those for whom they provide their services; they are employed by their agencies not, strictly speaking, by their service receivers. If anything does go wrong, everyone backs off and it is not easy to establish responsibility. This will be further explored in Chapter 3.

Work in the modern workplace is still stimulating debate from different theoretical perspectives about its role and impact. Some social theorists, such as Beck (2000, cited in Doherty, 2009, p. 84) link NSW with insecurity. In their view the insecurity of NSW derives from the instability of much contemporary work. The availability of jobs is unreliable. For example, a bank nurse might be employed to work three nights a week but if something goes wrong and one of her colleagues is ill, she might be called upon to work an extra night. This would be fine for a childless woman, but it might present a problem for a woman with children. Theorists have often referred to the typical distinction between standard workers and NSWs in their analysis of job insecurity.

Gash (2008, p. 660) mooted that part-timers, for example, as the largest group of NSW in the UK, are to be found in inferior conditions including low wages, poor access to employer-provided training, and job autonomy. Beck has labelled the modern society the 'risk society', in which the temporal destandardization of labour, based on part-time and temporary employment, leads to a social structure of Western societies characterized by diversity, uncertainty and insecurity in people's work and life, where work has lost its privileged position as an 'axis' of living (Doherty, 2009, p.85). In other words, it is argued that what used to be called 'Work Society', where work defines a person's position in society, has been replaced by 'risk society' where permanent, secure jobs are not the norm (Steele, 2004). However, others, such as Doherty (2009, p. 87) cast doubt upon this correlation between NSW and job insecurity, describing it as an unacceptable generalization:

“...the end of work thesis seems to rest significantly on the implications of a posited increase in ‘non-standard’ work. The argument can be difficult to unpack, as the end of work prophets tend towards rather sweeping generalization.”

Doherty (2009) disagreed with social theorists who claimed that work in the modern workplace holds a much diminished role. This social dimension covers NSW based on the question of whether work is still a significant focus of personal life. Doherty's argument is that a consumer society is a society based on production which is bound up with the view that we have entered an age of insecurity in relation to employment. The work of Doherty provides an interesting perspective on the on-going debate about work and security. It provides a useful analytical edge to the way different theories consider the relationship between risk and contemporary work. His analysis postulates the general division between standard work and NSW when it comes to measuring the insecurity of the latter. His article concentrates on particular aspects of work, in terms of its value and role in individuals' lives. For example, some of the participants in Doherty's study felt that they did not have a voice at their work. The changing nature of employment relationships brings challenges for health and safety law. This particularly applies to the challenges brought by NSW which raises the question of concern to us: risks and hazards faced by those at work and how they can be most effectively dealt with.

For example, people do not have to come to their employer's premises because they can work from their homes. At least some forms of NSW are precarious and have a negative effect on health and increase the risk of illness and injury. Sargeant and Giovannone (2011, p. 3) note that:

“Precarious work takes different forms on today's job market. In the scientific literature it is often associated with non-standard forms of work such as temporary, part-time, on-call, or day-hire and short-term position and also with the increase in the prevalence of self-employed. Additionally, work at home and multiple jobs also contribute to the increasing significance of 'non-standard' forms when considering precarious work.”

These different types of employment, created by modern societies, have also created new types of risks which differ from those that health and safety regulations have long dealt with. In this context and with the increased reliance on NSW in recent years, the concept of risk itself is disputed and the tools which the law provides in order to respond to such risks are questioned. There is no doubt that law is an important instrument to withstand the challenges of the modern labour market. This is confirmed by the continuous debate about the role and function of health and safety law in the UK. For example, a recent review was initiated in the UK by Lofstedt in November 2011, in order to re-assess the efficacy or otherwise of the existing health and safety regulations and what should be done to ensure that the current legal system is working. As was pointed out by Lofstedt (2011, p. 17):

“There is a strong case for taking a step back once again to consider whether the regulations are still suitable for the modern workplace and continue to deliver improvements in health and safety outcomes, or whether they have gone too far.”

This review was based on a cost-benefit analysis of health and safety law. It aimed to consider the overall objectives of the law to protect all those at work without neglecting the need to support business and not impose undue burdens on it. This approach is not new and it has been adopted in reviewing and designing health and safety regulations in the UK throughout its legal history: the Robens Report (Robens 1972) and Lord Young's Report (2010) are obvious examples of this. Significant improvements have been made in

occupational health and safety at work since the passing of HSWA of 1974. This can be seen in the reduction of work-related illness, injuries and accidents. For example, the number of fatal injuries at work to employees is considerably reduced; from 651 employees in 1974 to only 116 in 2010/11 (HSE, 2011). However, when it comes to the case of NSW, the challenges are higher and the question is about how far the law responds to risks that might be faced because of these patterns of work.

There is growing evidence that workers with NSW arrangements are at special types of risk due to the nature of their work, which makes them more vulnerable than workers on permanent contracts (Great Britain: Trade Union Congress (hereafter TUC) Commission on Vulnerable Employment, 2008). For example, NSWs may have less experience and familiarity with the operations and procedures in dangerous industries such as construction and agriculture, exposing them to higher risk. Lack of safety training and the limited availability of protective and preventative measures may, as well, play a role in putting them at risk. In addition, with the increasing number of women employed in part-time work, a recurring question is raised about the extent to which combining work with family responsibilities might affect their health. This was recently considered in the Spring-Summer 2012 issue of the European Trade Union Institute's health and safety at work magazine where Marianne De Tyoter argued that "... women workers deploy common strategies to cope with work and family constraints, but which nevertheless impact on their health, careers and early retirement decisions as illustrated by research..." Furthermore, NSWs in many cases lack the legal status of employees by not having a contract of employment, hence employers try to escape cost by not providing them with essential legal protection which they would provide in the case of standard workers (Great Britain: TUC May 2008). In addition, research also shows that the health and safety risks are increased for NSWs for other reasons, for example: agency temps and the self-employed are sometimes badly affected through their exclusion from, or only limited availability of, occupational health schemes, health screening at the workplace and policies for fitness support (Leighton et al. 2007).

1.4 The Method

Two elements have been adopted: theoretical and empirical. The two are complementary and successive, i.e. the first element builds up the theoretical framework of the study through extensive library research. In order to facilitate the construction of the theoretical framework, an extensive review has been made of the available relevant literature. This includes primary sources of law - legislation (domestic and European), common law and, 'soft' law, (e.g., Government guidelines and recommendations); as well as secondary sources - academic materials and other researchers' work pertaining to the area of research.

A number of theories were considered with a view to facilitating the construction of a conceptual framework. Regulation Theory and Risk Theory both emerged as useful tools for the synthesis of the theoretical framework. It was necessary to regard the central theme - the law - through the prism of social and economic changes as well as the human experiences which have shaped it. This necessity is admirably illustrated by Regulation Theory which has been employed to some degree in the formulation of the research structure. It provides the most compelling explanation of legal strategies and is outcome based. In the new economic crisis in developed economies, some writers think that the approach of Regulation Theory is worth re-visiting (James, 2009), despite its having been over twenty-five years since it was conceived. The advantage of Regulation Theory is that it recognises the interplay of many disciplines in understanding the life of human societies. The fundamental purpose of society is that humanity may thrive. There are social, economic, legal and cultural aspects at work, overlapping, influencing and confirming the whole. Human societies are fluid and it stands to reason that their many elements cannot usefully be studied in isolation. Regulation Theory's field of analysis involves economics, the maintenance of social bonds, and the function of politics in socio-economic problem solving. Its origins can be traced back to France in the early 1970s during the economic instability in the French economy (Boyer, 1990). Regulation Theory acknowledges regimes of accumulation and methods of regulation (Picciotto and Campbell, 2002). The former analyse the way in which production, consumption and distribution shape and increase capital, securing the economy over time. The latter comprises a set of institutional laws, norms and forms of State policy with other practices which provide the context in which regimes of accumulation can work.

The main aim of Regulation Theory was its attempt to explain the changes that were brought about in the economy, politics and the society as a whole as a result of the shift from Fordism to Post-Fordism. According to Aglietta (1979) Fordism refers to a system of production based on the assembly line, which is capable of relatively high industrial productivity where workers work on production lines performing specialized tasks repeatedly. On the other hand, Post-Fordism is concerned with the dominant system of economic production, consumption and associated socio-economic phenomena, in most industrialized countries since the late 20th century. In the economic realm significant changes were witnessed in Western societies, for example, mass marketing was replaced by flexible specialization. Furthermore, the workforce changed, with an increase in internal marketing and subcontracting and a rise in the use and numbers of part-time, temporary, self-employed and home workers. The basic principle of Regulation Theory illuminates the conditions of NSW within the socio-economic framework of the nation. As one of the industrialized countries, the UK has of course not been isolated from all the changes in the global economy since the mid-1970s. James (2009, p. 186) calls the responses to such changes, and the shift from Fordism to Post-Fordism, 'Thatcherism'.

'Thatcherism' embraced the belief that economic growth is achieved through flexible labour processes based on flexible production routines. Following this, significant changes have been witnessed not only in the economy but in the role of the State in pursuit of the maintenance of flexible labour markets and the dismantling of collective bargaining, providing supply-side economic support to the economy. The effects of such strategies can still be seen in today's labour market in the UK. An obvious example of this is the changing manner in which work is organized. For instance, the free market has brought intense competition so that, for example, city councils no longer manage waste-disposal by council workers but rather they put the work out to tender and accept the lowest price offered. People who formerly had work for life, employed by councils, might now find themselves working on short-term contracts for contracting companies. In this context, Regulation Theory provides a comprehensive way of looking at a broad picture of the changes taking place in society. Although the central focus of the theory is on economic changes, it was recognized by the key theorists such as Aglietta (1979) and Boyer (1990) that to understand the economic developments fully, other changes need to be considered.

Social and economic changes influence the development of law, in response to the conditions in which a society finds itself. Recognizing this, it was realized at an early stage that the theory could be applied in this thesis in order to investigate the legal vulnerability of and health and safety issues for, NSWs. This is because there was a need to consider not only the changes in the legal system over the last three decades in the UK but also the changes in society as a whole. Regulation Theory recognizes that any provision for the advancement of a society must necessarily pay attention to all relevant aspects when designing or modifying law.

The origins of UK health and safety law are strongly connected with the Quaker-led social reforms of the early nineteenth and twentieth centuries. The Quaker ethos dictated that all persons are equal. On that account all have a right to the same respect and protection. As a result of the exertions of people such as the Frys, Rowntrees, and Beveridges, it was recognized that the best way to ensure a healthy economy was to ensure the health of the workers. In order to safeguard the rights and benefits of working people, certain conditions had to be enshrined in law. It was recognized at around about the same time that the children of the poor have as much right to an education as the children of the rich. However, 'Rome was not built in a day' and so it was by degrees that legal modifications came into being with the eventual result that children below a certain age were not permitted to work, and provision was made for their education. Their older, working counterparts were to be protected from excessive risk at work by subsequent health and safety legislation such as the early Factory Health and Morals Act of 1802. It can be seen that by comparing the provisions of this Act with those of the very latest UK legislation, reform takes time. Regulation Theory explains this process, paying attention to the necessity to work within the society and culture in which desired changes are to take place. For legislation to be effective, the mind-set of society has to be modified over time in order to facilitate the effective reception of new ideas. In this context, Regulation Theory provides a very helpful holistic view. A prime example of the fluidity of the socio-economic condition is to be seen in the significant changes in employment patterns which occurred in the 1970s.

Many traditional heavy industries (e.g., the coal and steel industries) declined. Many of the people who had worked in these industries had no alternative or transferable skills and a large number of the workforce affected were middle-aged men who would find it difficult or even impossible to get alternative employment. Those who were not able to re-train, for various reasons, had to seek employment wherever they could find it, and under whatever conditions were offered. At the same time, the increased focus on equality for women inspired many mothers as well as single women, either to return to work or to engage in paid employment for the first time. Women, who wanted to care for their families and work, either for their own satisfaction or to supplement their husbands' reduced incomes, took part-time jobs (the interviews conducted for this research revealed some interesting factors active in the changing work patterns: see below Chapter 6, p. 167). In short, the pattern of working practice in the UK was altered to a significant degree, as discussed above. These and other changes had consequences. For instance, the nature and structure of the labour market underwent radical changes. There was an increased demand for flexible working arrangements.

Legal review of the existing health and safety legislation was urged the 1970s by the interested parties including government, trade unions and businesses in order to respond to the above mentioned socio-economic changes (Robens Report, 1972). It was recommended that the management of health and safety must be approached in a more systematic way and integrated more closely into organisational decision-making. Regulation Theory provides a key to understanding the way in which changes in one facet of society will have repercussions in others. For example, when traditional heavy industries are forsaken in favour of lighter, service industries, the aspirations and expectations of the workforce evolve as subtle shifts occur in the socio-economic fabric. A generation ago, the expectations of coal-miners and their families included having permanent employment; their aspirations would have included a tied cottage or a council house. Their children now work in light industries, expect to own a car and aspire to owning their houses, yet they cannot expect permanent employment and may worry about redundancy. (Real History of Britain: Britain's Black Diamonds, 2011). Regulation Theory takes cognisance of the fact that each of the socio-economic changes is interrelated and effects flow, one from the other. In this context it can be said that the theory predicts the way the law had to be built in order to keep flexibility and functionality at its heart. This was to be seen in the process of enacting the HSWA 1974.

The law aims to protect and facilitate the proper functioning of the economy as well as to address the needs of individuals. Therefore, the approach adopted under the HSWA 1974 was to take a broader view of the responsibilities of all those involved in health and safety. The law sought to allow for and to furnish the necessarily eclectic approaches to health and safety required in different working environments. The most effective legislation would not be a 'one-size-fits-all' affair. In other words, it is the result to be achieved or prevented, rather than the means by which this is affected, that counts. Regulation Theory, taking into account political changes in a society, can be used with equal facility to illuminate the change in the political complexion which occurred as a result of the UK drawing closer to the EU and having to align some of its legislation with that of the EU. An example of this would be the so called 'Six-Pack' legislation of 1992 (referred to above, p. 5: see further below Chapter 4). These pieces of legislation, as will be further discussed in Chapter 4 of this thesis, introduced into UK law the principle of risk assessment and reduction of risk to the lowest possible level. These principles reflected the EU approach towards health and safety as a priority, by aiming at providing a higher level of protection to those at work. Despite the fact that Regulation Theory is, strictly speaking, an economic theory, its multidisciplinary approach renders it sufficiently flexible to make it useful to any of the disciplines which it encompasses. However, there is an element of truth in every theory and no one theory would be the exclusive repository of all truth. Therefore, although this theory has much to recommend it, it is mainly economy oriented whereas the principal interest is in the legal challenges of NSW. Hence, and in order to take the best and most useful elements of each theory and adapt them to suit the purpose of this research, other theories were considered such as Legal and Risk Theories.

The concept of risk which has been already discussed earlier with Beck's Risk Society, has been detailed in Risk Theory. Risk Theory provides an important theoretical approach in its attempt to analyse the nature of the contemporary workplace. The concept of risk has been used in order to understand contemporary labour markets. In Risk Theory modernization has both positive and negative features. There is an increasing level of wealth and security which is greatly enhanced by techniques of risk control and insurance on the one hand; on the other, modern society's concern with the presence, creation and distribution of risk has led to a preoccupation with it, even though realism demands acceptance of the inevitability of some risk in everything.

As noted above, German theorist Beck (2002) (cited in Doherty, 2009, p. 87.) has argued that the insecurity in the modern workplace derives from the notion that work has now lost its position as an 'axis' of social and domestic life. As a result of this, some social theorists are firmly convinced that the insecurity of much contemporary work is linked to the increase of non-standard work arrangements. The foundation of their view is the predominance of segmentation in labour markets and their observance of the distinction that exists between privileged core workers and peripheral insecure workers, where most of the NSWs can be found. In their efforts to analyse the nature of modern work, these social theorists rely heavily on the concept of the value of work in individuals' lives. This provides a rich and useful method which carries much potential for investigating the nature of work and employment in modern labour markets, including that of the UK. Their approach was relevant to a significant part of this research, which considers the changing nature of employment relationships with special reference to NSW. Since the decline of heavy industries in the UK, coupled with the unemployment of many unskilled or semi-skilled workers, individual responsibility has become a critical issue. The quest for new occupations has necessitated personal initiative on the part of the newly unemployed. According to Felstead, Gallie and Green, (2002) (cited in Doherty, 2009, p. 88) skills and qualifications are increasingly required in today's workplace. Thus unskilled workers have had to acquire new skills, semi-skilled workers have had to retrain and in both cases, prepare for occupations hitherto unknown to either. These workers have had to take new risks, investing time and money in retraining, re-educating and applying themselves to the occupational unknown. Thus, individuals are now experiencing conscious and deliberate risk-taking as a survival strategy. It can be postulated, however, that their approach to risk and the instability of NSW arrangements as an example of contemporary work, rests heavily on a general association between the instability and insecurity of work and the different forms of non-standard work arrangements.

Although Risk Theory, with its analysis of the factors and changes in the nature of work and employment, has some merit, it is important to support such a conclusion with further empirical evidence which seems to be in short supply here. This leaves such social theory open to question by those involved in research on work and employment (Doherty, 2009). Therefore, since an important part of the research concerns liability for accidents, ill-health and other damages at work, it was essential to consider the relevant theories' attempts to

determine answers to some core questions about risk and responsibility. Legal Theory rests significantly on the relationship between risk and law at a practical level. It has developed specialized uses of risk terminology which draw deeply on the theoretical heritage concerned with rational action and decision-making. It employs ideas related to risk and decision-making in order to determine answers to some crucial questions regarding responsibility, equality and justice. In doing this, the Legal Theory displays a strong connection with techniques developed through the study of statistical probabilities and decision-making method (Steele, 2004). Legal theorists, in their argument on risk, admit that the connection between risk and human beings is complex. However, they emphasize that risk, as a decision-making resource, plays an essential role in establishing responsibility. In clarifying this, they argue that taking rational action, despite lacking certain elements of knowledge, suggests that an understanding of uncertainty, structured in terms of risk, allows the planning of actions despite not knowing what will transpire in the future. This approach has been applied extensively in contemporary management and regulations. This can be seen in much of modern health and safety legislation in the UK, where the general approach is to set out the objectives to be achieved and to give considerable choice to duty-holders as to the measures they should put in place to meet these objectives. These ideas are linked also to aspects of law and Legal Theory, which are compatible with ideas of choice and decision-making and then issues of individual agency. As to the continuing debate about the role and function of aspects of law, such as tort law, in particular Legal Theory has important ideas in this regard. The theory emphasizes that the traditional core of tort theory is that accidental harms are the effects of individual actions.

Having said that, a number of theorists have tried to explain, using the concept of risk, why and when there is individual responsibility for the outcomes of one's actions, sufficient to lead to liability. It is worth mentioning here that theories explain risk as part of the solution to such questions as are now so widespread and Legal Theory is only one of them. Furthermore, as far as the role of tort law is concerned, in Legal Theory it is all about the idea of risk, and making sense of the concept of negligence in tort law cannot be achieved without reference to risk. In addition, Legal Theory in its argument about risk and regulations discusses important ideas in regard to insurance and tort law in order to find out which one can be more effective in providing cover for accidental injuries at work.

Some legal theorists such as Atiyah (1997) assert that insurance, including compulsory insurance cover, in many crucial cases, challenges the monopoly of law in respect of accidents and threatens the judicial interpretation of the event by overlapping with the law of tort. He further emphasises that insurance technique underlines the whole practice of the law of tort; without it, accident law would be relatively insignificant, because damages would be paid on few occasions. His argument is that individuals would never opt for the cover provided by tort law at the price at which it is offered. It pays out only after years of legal argument and litigation and it is extremely expensive. Atiyah (1997) observed that rather than affording adequate financial security at a reasonable cost, as insurance ought to do, tort confines high awards to the few successful litigants, leaving behind uncertainty and insecurity. Thus its price is too high and its attempt to deliver security is defective if it is approached as a form of insurance. This latter argument by some legal theorists highlights an important issue regarding NSWs, who in best cases will be covered by tort law, as many of them, because of their legal status, cannot have insurance and will be responsible for their own insurance arrangements, as is the case for the self-employed.

In building up the conceptual framework of the study, it can be said that these theories - Regulation Theory, Risk Theory and Legal Theory - have much potential in terms of their attempts to offer a model that can be used in different areas of research. The macro-approach of Regulation Theory can be used to look at the changes in the labour market in the UK. It is important to explain these changes in a way that helps one to understand the position of NSWs in the labour market. In addition the central hypothesis of the thesis (see Chapter 6, p. 135) is that NSWs are subject to risk, taking into account various factors such as being less familiar with the workplace, less likely to be sufficiently trained and if they have accidents, they are less likely to be adequately covered. Therefore, it was important to consider other theories such as Risk Theory and Legal Theory as ways to understand the nature of risk in general. However, Legal Theory complements Risk Theory, providing a significant contribution in terms of the relation between risk and regulation. Legal Theory is the theory of how the law affects people and situations; how it protects, penalizes or redresses and under which combination of circumstances. In Legal Theory, the law is the subject and risk is the object, whereas with Risk Theory the reverse is true. This is also important in order to examine the law in practice and how it applies to NSWs.

Risk plays an essential role in driving some important legal reforms. This having been said, NSW arrangements are a new category of risk which seems to require further consideration, as this thesis seeks to show.

A number of pieces of key UK health and safety legislation have originated from the EU, therefore it was relevant, as part of building the conceptual framework of this research, to study the European Social Model. The European Social Model is based on social justice and solidarity, where economic and social advancement take equal priority, and where decent work and social protection combat poverty and social exclusion. A considerable body of European social legislation has been passed including Directives and Regulations concerning health and safety which creates an important safety net of minimum standards, preventing society from experiencing adverse consequences of the growing cost of the economy. The relevant European social legislation will be considered in Chapter 4 of this thesis in order to assess the impact of EU law on the UK legal system in recent years. The overall target of the European Social Model harmonizes with the fundamental social objectives which were set down in the Treaty of Rome 1958 which in turn led to the introduction of over half a century of social legislation. This has had a great effect on the increasing importance of health and safety legislation. More recently, it has been argued by Leighton and Wynn that the values of the European Social Model are no longer suited to the hard realities of the working world which is characterized by ever fiercer competition that is the result of globalization:

“There has been much reassessment of the European Social Model, increasing emphasis on labour market transitions, and the imperative of avoiding social exclusion and wider social upheaval. Within both the UK and EU, a priority has also been to lift unnecessary burdens on business, encourage flexibility (albeit in the EU under the ‘flexicurity’ flag) and provide support for organisational efficiencies whilst retaining appropriate social protections.” Leighton and Wynn (2011, p. 9).

This argument was also raised in the UK where health and safety law came into consideration in order to decide the best method to regulate health and safety at work. This can be seen from the Young Report (2010) as well as the latest review of health and safety law launched by Professor Lofstedt (2011).

Both the EU and the UK are seeking an ultimate aim of achieving a health and safety legal regime that will not be an obstacle for business and where the labour market can still be flexible and able to respond to the increasing economic challenges. Some take this further in claiming that in the current economic crisis health and safety legislation is not a priority and somewhat hinders the economy. This is particularly the view of the current UK government: Prime Minister David Cameron said in January 2012 that he wanted to “kill off the health and safety culture for good in the UK...” (European Trade Union Institute’s Health and Safety Magazine: Spring-Summer 2012 p. 7). Yet, according to Judith Kirton Darling (elected by the European Trade Union Confederation as secretary) as reported Gregoire, (2012, p. 7)

“The [financial and economic] crisis has had an enormous impact on the health and safety of workers in Europe. If you look at workers who are facing threats to their job, increased stress at work related to their employment security, that’s having a knock-on effect in terms of psycho-social health at work and all of the ramifications that that brings with it, leading to physical illness as well.”

With regard to this matter, a question is raised about the position of NSWs and where they stand with the continuous call for the deregulation of health and safety law in the UK and in the EU.

1.4.1 Fieldwork Method

The investigation is not only concerned with the broader picture of legal and social developments in the UK workplace; it is also concerned with the human experience of these changes. In order to investigate this effectively it was considered useful to employ a qualitative research method to discover at first hand, the effect of NSW on those who experience it. In other words, this research is not just studying a pure law situation in isolation. Social changes play an important part and these changes are experienced by human beings. Having reviewed the aforementioned theories, it was concluded that the situation of NSWs deserved further investigation. The acid test of the law’s efficacy in practice is to examine the experience of individuals working in NSW situations.

It is surely indisputable that modern health and safety law is in a better position to protect workers than it has been since the first great law reforms of the 19th and early 20th centuries. Having said this there is a caveat: the nature of NSW is such that there might be gaps in the safety net, through which workers may fall, under certain circumstances. This has become a serious concern in the wake of the fragmentation which has occurred in some employment sectors. Risk management is much more complicated when industrial projects are splintered, for example, several aspects of one public venture may be put out to tender instead of being completed by the employees of a single city council or construction firm. Today, several different companies may have contracts for the same project: electricians, plumbers, carpenters and so on. If an accident happens, where does the responsibility lie and to whom do the victims have recourse for redress? As previously stated, this topic is a very wide one which required the construction of a unique, original hybrid research model, custom-built for the purpose. Qualitative and quantitative methods were chosen: qualitative interviewing was seen to be a good way of discovering the extent, if any, to which NSW might put those employed under its forms at greater risk and make them more vulnerable than their counterparts in standard employment (Research Question 2: see p. 3 above).

For the empirical element, it was recognized that qualitative research in the form of semi-structured interviews, and the quantitative element, in the form of postal-questionnaires, would both significantly serve the overall aim of this thesis. Taking into consideration a number of constraints which this type of research involves in terms of time, cost and geographical factors, it was decided to distribute the questionnaire at an early stage of the empirical work (Pole and Lampard, 2002). This was in order to minimize the risk of a low response rate and to ensure sufficient time waiting for the return of postal questionnaires. Moreover, having the returned questionnaire would provide a broader overview of the experience of NSWs which would be expanded on in the interviews. Thus the other main function of the questionnaire was to aid the selection of suitable subjects for interview. This proved most effective and the resultant interviews yielded useful information which serves to illuminate the relationships which are of interest to the research. The collection of data took three months from the time when the questionnaires were sent out, via pre-paid postal return. These questionnaires were sent to 2000 addresses in Cardiff and 500 in Carmarthen and Pembrokeshire (see below Chapter 6 for the process of participants' selection, p. 40).

The aim of the questionnaire was to gather a random sample of subjects living in different designated areas, with a view to collecting a variety of occupations and discovering any significant links between environment and occupation, and the effect of various occupations on the health of the subjects. The original plan was to make a comparison between the situations of subjects living in the different designated areas. However, in the event, no useful comparison was possible because the available samples in some areas were too small to make such an attempt viable. This comparison was only one of several proposed, therefore the data, because it was rich in other possibilities, has yet served to investigate relationships between different types of occupations and effects on health.

Choice of occupation in connection with gender and/or health issues was dealt with in this study. In the event, the majority of the participants turned out to be standard workers although there was a considerable sample of NSWs as well. Of the latter, most respondents were from two major NSWs brackets: self-employed and part-time. The majority of self-employed were men and the majority of part-time were women. The men in self-employment were engaged in construction, whereas the self-employed women were care-home owners and hair dressers. The part-time women were engaged in nursing, teaching and the service sectors, .e.g. supermarkets. Further details on the type of people who might be employed in NSW will be given in Chapters 3 and 6. It was also useful, in order to develop the questionnaire, to conduct some pilot work. This proved to be beneficial because many comments were made which were taken into consideration in the final stage of designing the questionnaire before it was sent. The qualitative research tool chosen was selected for its ability to reflect the complexity of the issue whilst at the same time revealing as clearly as possible the way in which the law works, and how well it does so in practice. Therefore, qualitative research in the form of interviews was believed to meet this aim. In-depth interviews are particularly useful as the issues to be investigated cannot be observed directly (Denzin, 2008; Kvale, 1996). Thus the qualitative interview was desirable to investigate more closely the factors that might affect the working conditions of NSWs. In-depth semi-structured interviews helped to illuminate the research questions. The interviews were of two types: those who were respondents to the questionnaire and agreed to be interviewed, and some key individuals who did not receive questionnaires but were approached directly to be interviewed (see below Chapter 6, p. 165)

In conducting the interviews, basic elements were taken into consideration before each interview took place. Some of these elements are related to the choice of participants, the types of questions to be asked and others to the selecting of relevant sites, sectors and occupations. A sample of NSWs and standard workers was selected for the empirical part of the study. It was difficult to establish, at the outset, how many people would be interviewed and to specify the size of the sample. Therefore, it was decided to select the interviewees on a triangular basis, from those who participated in the postal questionnaire from both groups: standard and NSWs as well as key individuals from management and health and safety officers in the UK and the European Union such the Director of the European Trade Union Confederation (hereafter ETUC). This method of selecting the interviewees proved useful and it saved time and cost. The purpose of interviewing standard workers is to highlight any observable contrast between their working conditions and those of NSWs.

Given the necessity of obtaining the voluntary participation of the interviewees and considering the ethical side of the interview process, an “informed consent” form was signed by the interviewer explaining that their identity would be anonymous and protected securely in accordance with the requirements of the Data Protection Acts and other relevant regulations. This was the case in most interviews, save where interviews were conducted over the phone due to the interviewees’ preference. The management of interviews provided a special difficulty in that the time scale had to be more flexible. The reason for this was that not all interviewees were willing to be interviewed as soon as the request was made. There were various reasons for this, including prior arrangements, e.g. holidays to be taken into account. This made for a quantity of waiting time which had not been anticipated. Some subjects, previously quite happy to be interviewed, changed their minds at the last moment or postponed their engagement with the study. The dual method is more likely to produce good results in terms of quality and scope (Bryman, 2008). The questionnaire followed by personal interview proved to be appropriate for two reasons: firstly, the questionnaire helped to identify a variety of NSW patterns among respondents. Additionally, it aided the choice of subjects suitable for interview.

Secondly, the interviews themselves yielded a wealth of data and personal experience of life at the sharp end of NSW and its interaction with the law. It is doubtful whether the rich and varied findings would have come to light by any other methods.

1.5 Ethical Consideration

It was of course of great importance to ensure that the data was honestly and fairly collected, held, used and stored in compliance with the University of Glamorgan's ethics policy (see University of Glamorgan's Code of Practice for Research Students, September, 2011). The questionnaire responses were directed to an office at the University's Campus. The participants of the semi-structured interviews all agreed to have their interviews recorded in written form or on tape. First names only were used and home addresses were not recorded. The data from the interviews and the questionnaires have not been made available to other researchers or organisations and anonymity has been maintained.

1.6 Importance of the Study

Workers in the UK and in other developed economies have historically shared a similar employment life-course, one based on full-time, permanent work. This was the context within which labour law, collective bargaining and the social security system developed in these economies (McCann 2008; Delsen 1995). As summed up by Lewchuk, Clarke and De Wolff, "Labour legislation, occupational health and safety systems, and labour and social policies are based largely on the notion of a contractually defined employer-employee relationship within formal workplaces" (Lewchuk, Clarke and De Wolff, 2008, p. 389). A similar definition of employment relationships was also adopted by the International Labour Organisation in recognition of the legal status that is required in order for workers to be covered by the different pieces of legislation including health and safety law.

"To refer to the relationship between a person called an employee ... and an employer for whom the employee performs work under certain conditions in return for remuneration. It is through the employment relationship... that reciprocal rights and obligations are created between the employee and the employer." (International Labour Office (2006, cited in Lewchuk, Clarke and De Wolff, 2008, p389)

This thesis used the employment relationship model in order to identify the type of employment to be considered and to refrain from stretching the research into wider areas taking into consideration the fact that some categories were not included in the responses to the questionnaire. Only the categories in which people found themselves could be usefully included. NSW is not without cost, as each form may offer its own challenges, although most of them share the same disadvantages such as low pay, few benefits, lack of collective representation and little or no job security (Fudge and Ownes, 2006). However, it is the challenges for health and safety and health and safety law created by NSW which this research investigates. The association between NSW and health is a complex one and this can be seen from the inconsistency in the evidence about such claims. Therefore, a growing voice has been raised recently for the conduct of further research in this area to explore the extent to which NSW can be considered as an indicator for occupational health and safety issues for those employed in its different patterns (Lewchuk, Clarke and De Wolff, 2008).

To this end, this research considers the health and safety problems and concerns regarding NSW and its effect on the health and safety of those engaged in it. This contributes to the study's enquiry into the extent to which occupational health and safety law has taken into account the complexity of NSW and how the legal rules respond to that.

1.7 Structure of the Study

The structure of the research is threefold. First is the literary review of the existing research in the area on which this research has concentrated. This involves an extensive study of both primary sources such as legislation and soft law as well as some secondary analysis of a number of academic materials, statistics and case-law. This review reveals salient issues on health and safety law as experienced in the workplace. The next part of the research structure is the empirical work, i.e. designing the study to be conducted in the field. The third part is analysing the outcome of the research to determine or discover ways in which improvements might be made either in the application of the law or in some areas of policy reform. The study comprises seven chapters.

Chapter One is the introductory chapter comprising a general overview highlighting key literature, the importance and aims of the study, an ethical statement, and the research methodology.

Chapter Two aims to outline the evolution of health and safety legislation and considers the early means of using legislation as a way to provide protection to those at work.

Chapter Three concerns an essential area of the whole study which relates to the changing nature of employment relationships represented by the increase of NSW arrangements. This Chapter aims to highlight key issues in the rise of various forms of NSW.

The aim is to provide a broad context of NSW and a clear picture of this type of work and the workers involved in it. It attempts to analyse the vulnerability of NSWs in terms of accidents and ill-health at work.

Chapter Four is a crucial one, because of its objective which is concerned with the legal framework in the UK; its central goal is to consider the changes in the modern health and safety system in the UK.

Chapter Five concentrates on the employer's liability in the context of health and safety at work. This covers two important torts - the common law tort of negligence and the tort of breach of statutory duty - as well as the employment contractual liability.

Chapter Six sets out the hypotheses and research questions and evaluates the available methodologies both quantitative and qualitative. This chapter details the analysis of the results of the questionnaire responses, linking these to the research questions. It also contains the methodology for the qualitative research which comprises the semi-structured interviews. This is followed by analysis of the interviews divided into various topics including decisions

about working patterns, the impact of work on health and safety, health and safety law in practice, and European legislation in the area of health and safety

Chapter Seven contains the conclusions. In this context, the chapter revises and reviews the central objectives in the light of the results of the empirical work and presents some relevant recommendations.

A bibliography is included and annexes, which include a glossary of terms and the questionnaire used in the empirical research. There are many abbreviations in this thesis and the glossary of terms sets these out fully. When an abbreviation is first used it is set out in full and thereafter only the abbreviation is used in the text

CHAPTER TWO

The Traditional Protective Paradigm

2.1 Introduction

Law is more than a set of words on a page. It evolves in response to need, which is driven by the economic and social activities and concerns of human beings. Therefore, it was relevant to understand the genesis of UK health and safety law and review the socio-economic background and the historical context in which the phenomenon occurs. Bearing this in mind it is especially helpful to trace the origins and impetus of the development in health and safety law. There are social, economic, legal and cultural aspects at work, overlapping, influencing and configuring the whole. This holistic view, which Regulation Theory, as explained in Chapter 1 offered, will be adopted in this Chapter and in the following Chapters, 3, 4 and 5. It is important to consider the evolution of the health and safety law in the UK since its early days up to its recent formula. This will help to place later legislative development in perspective in the next chapters.

Therefore, it was helpful to examine the effects of the Industrial Revolution and how the nature of work changed from the nineteenth century to the present day, as well as the types of risks that people were then exposed to. This includes how the types of industries changed from the heavy industries which caused deaths and illnesses, leading to the introduction of the first means of legal interventions to protect those who were most at risk, particularly children and women. In this context, this Chapter will consider the basic traditions of criminal law which adopted the reasonability approach since its early stage, the controversies over the enforcement system and how the penalties were insufficient to deter employers from abusing their workforce. During the course of the eighteenth century to the late nineteenth century there were some barriers that delayed the development of the civil law i.e.. negligence.

This is potentially significant, particularly considering the case of NSWs. Further discussion of this will be found in Chapter 5 in order to decide where NSWs will be best protected.

2.2 Historical Background to Health and Safety Law

Despite the fact that the Industrial Revolution began to take hold in Britain during the late eighteenth century, health and safety law did not begin in earnest until the early nineteenth century. During the course of the nineteenth century, a series of legislative measures were introduced which sought to regulate the environment in which people worked. These measures aimed primarily at protecting women, young workers and children, by restricting the number of hours they could work and prohibiting their employment in more dangerous trades where workers were at risk of developing industrial diseases or sustaining injuries. Through the nineteenth and twentieth centuries, an increasing range of workplaces and industrial accidents and illnesses were brought within the scope of the law. Today the employment of NSWs such as part-time women and young workers presents similar concerns regarding health and safety. (see Chapter 3)

2.2.1 Social and Economic Development and the Evolution of Legislative Thought

In the late eighteenth century the British Industrial Revolution, which had been developing for several decades, began to accelerate further. It was the eighteenth century that saw new inventions: steam engines, the factory, mass-produced cotton and woollens. Britain became the first industrial state in Europe (Hunter and Ralston, 2009). It had become an industrial nation, as manufacturing exceeded agriculture in its contribution to the national income (Kang, 2008). Technology changed: hand tools were replaced by steam-driven machines. The Industrial Revolution brought a whole transformation with it; there was not only the unprecedented economic growth but also social change. Population and towns grew, production and trade increased and income grew. With the increase in population, the demographics shifted. This transition from a more self-sufficient rural economy to an urban society had great effects on people's lives in terms of the pattern of their work and their living standards.

Industrial resources like coal and iron were in Central and Northern England; hence a shift in population, northward from Southern England, took place. From the late eighteenth century a new type of industrial town began to develop. Only towns that had access to raw materials, in sufficient quantities, and that possessed facilities for marketing the finished goods, could hope to develop any large-scale factories. Different industries developed throughout the eighteenth century in different regions (Hunter and Ralston, 2009). Examples include West Riding woollen manufacture, Lancashire cottons or the linen industry of eastern Scotland. However, the textile industries - cotton, wool and worsted, linen and silk - were the most important. These industries were particularly hard for workers who had to endure long hours of labour, the nature of the work being done meant that the workplace had to be very hot, steam engines contributing further to the heat in these and other industries. Machinery was not always fenced off and workers would be exposed to the moving parts of the machines whilst they worked. Children were often employed in these factories and they moved between these dangerous machines. This led to them being exposed to a great deal of danger and mortality rates were high in factories (Henriques, 1971). Women of the working classes would usually be expected to go out to work, often in the mills or mines; as with children and men the hours were long and conditions were hard. In short, the increased pace of the Industrial Revolution and its concentration of labour in factories and mills, had brought greater awareness of the conditions of those employed in such industries. As a result, a large number of Factory Acts were introduced to regulate working conditions in an attempt to preserve the health and safety of workers in the above industries and others. These Factory Acts represented an effort of the state to control the exploitation of the labouring classes (Fletcher and Harrison, 2009).

2.3 Early Legislation

The earliest legislative interventions, as previously stated, were largely a consequence of the revelations of the abuse of children and women in the textile mills (Thomas, 1948). High proportions of the labour force were young persons in many industries: especially in the cotton mills. The suffering of children was widely investigated as early as 1813 by social and labour historians such as Richard Ayton who claimed that:

“One class of sufferers in the mine moved my compassion more than any other. A number of children who attend at the doors to open them when the horses pass through and who in this duty are compelled to linger through their lines, in silence, solitude and darkness for sixteen hours a day.” (Cited in Kirby, 2009, p. 8) It is worth pointing out here that the efficiency of the early legislation was seriously impeded by the lack of effective enforcement. As a result of this many workers in factories were unable to benefit fully from the protection provided by the early Factory Acts. This will further discussed throughout this Chapter.

2.3.1 Women and Children in the Industrial Revolution

The early factory system was the most prominent feature of the Industrial Revolution. As factories spread rapidly the owners of mills, mines and other forms of industry needed large numbers of workers. However, they did not want to pay high wages, thus children and young persons were the ideal employees (Hunter and Ralston, 2009). The machines were small and stood low on the ground; they could be easily used by children (Thomas, 1948). Moreover, children were cheap labour and small enough to fit between machinery that adults could not get between. Therefore, many children ended up working in all types of industry. This was mainly because parents were quite willing to let children work in mills and factories because it provided the family with a higher income (Hutchins and Harrison, 1911). Furthermore, because education in the early nineteenth century was not compulsory and in the majority of cases schools were expensive, poorer families could not afford to educate their children. Even before the Industrial Revolution, very young children were to a large extent employed either in their own homes or as apprentices under the Poor Law Act of 1601. Under the Poor Law orphans and pauper children were directed to be apprenticed to some trade. There was no restriction on the age of workers, or on the number of hours that they could work. This led to children as young as eight or nine being required to work twelve or more hours a day. Although long hours had been the custom for agricultural and domestic workers for generations, the factory system was criticized by some reformers including popular radicals, trade unionists, and Tory paternalists in Parliament, for unhealthy working conditions, low wages as well as unlimited working hours.

Once the first rural textile mills were built (1769) child apprentices were hired as primary workers. Their modern contemporary counterparts would be the labour gangs of foreign workers who work long hours for low pay, domestic servants .e.g. nannies, who are mainly from overseas and frequently subject to unfair or unsafe working conditions. In principle, migrants are covered by the same health and safety legislations as native workers. However, the way they are protected in practice may heavily depend upon establishing who their employers are and who is therefore responsible for their health and safety. In the case of agency workers, the agency who supplies the staff and the person who accepts their services share responsibility for the said workers. Determining who the employer is can depend on the facts of each case. What happened to children within these factory walls became a matter of intense social and political debate at the time. Reformers called for child labour laws that were concerned with the state of working children (Kirby, 2009). Increased appeals for state intervention were made in the latter part of the eighteenth century. This reflects the changing attitude towards the working conditions in factories and in particular for those of children. In 1795 some of the Manchester medical men formed themselves into the “Manchester Board of Health” (Hutchins and Harrison, 1911, p. 9). They requested legislation to regulate the hours and conditions of work in factories. Their findings were reprinted in nearly every subsequent work on this subject. However, the first Factory Act which aimed to improve the conditions of pauper apprentices was the Act for the Preservation of the Health and Morals of Apprentices and Others, employed in Cotton and other Mills, and Cotton and other Factories, June 1802. It sought to impose certain standards in order to protect young children working in cotton and woollen mills, and factories where more than twenty persons were employed (Selwyn, 2011). Fundamental hygiene standards were identified by the Act. The Act was directed to the due cleaning of such premises by two washings with quicklime yearly, to admission of fresh air by means of a sufficient number of windows, and to supply every apprentice with sufficient and suitable clothing and sleeping accommodation. The Act banned apprentices from night work, and limited their labour to twelve hours in the day. This was stipulated in Section 3 of the Act:

“And be it further enacted, That no Apprentice that now is or hereafter shall be bound to any such Master or Mistress, shall be employed to work for more than twelve Hours in any one Day,(reckoning from six of the Clock in the Morning to nine of the Clock at Night), exclusive of the Time that may be occupied by such Apprentice in eating the necessary Meals: provided always, that, from and after the first Day of June

One thousand eight hundred and three, no Apprentice shall be employed or compelled to work upon any Occasion whatever, between the Hours of nine of the Clock at Night and six of the Clock in the Morning.”

The 1802 Act was the first of a long series of statutes regulating the hours and conditions of labour that were collectively known as the Factory Acts (Kloss, 2010). The Act was applied to mills and factories employing a certain number of persons, as explicitly specified in section 1 of this Act:

“All such Mills and Factories within Great Britain and Ireland, wherein three or more Apprentices, or twenty or more other Persons, shall at any Time be employed, shall be subject to the several Rules and Regulations contained in this Act; and Master or Mistress of every such Mill or Factory is hereby strictly enjoined and required to pay due Attention to and act in strict Conformity to the said Rules and Regulations.”

The Act, in Section 2, required that walls and ceilings be washed at least twice a year with quick-lime and water, and the windows were to be sufficient to provide adequate ventilation. The Act contained other provisions regarding instructing apprentices in writing and reading of its rules and regulations. It also specified the provision of apartments and beds for male and female apprentices. The enforcement of the 1802 Act was authorized to local clergymen and magistrates. This Act was easily evaded: although it was stipulated in the Act that visits of inspection were to be made by local magistrates and clergy to the factories and mills, this proved to be ineffective as many of the inspectors were mill owners and they simply would not apply the law against their own interests (Bartrip, 1983). From 1815 there was an increasing demand for Parliamentary restriction of child labour in the cotton mills (Fielden, 1969). It was suggested that working hours were to be twelve hours a day including one hour and half for meals; this suggestion was not accepted by the owners of the factories and mills. This reflects the greed of those owners who were not willing to lose out by enforcing such legislation. Despite the resistance of the owners of factories and mills, efforts to regulate the working conditions continued. Similarly, in the present time, NSWs may be disadvantaged by gaps or inadequacies in the law which can leave them unprotected. For instance, when a worker is not an employee: agency workers and contractors who take legal action following injuries can fall between two stools, as will be explained by the case law in Chapter 3. The debate over the factory system delayed any new enactments until 1819.

Finally in 1819 an Act to make further Provisions for the Regulation of Cotton Mills and Factories and for the better Preservation of the Health of Young Persons employed therein, July 1819, was passed. This Act applied only to the cotton mills, and each piece of legislation, around the same time, only applied to a particular industry or class of workers. This is a symptom of the way in which the mind-set of legislators had to evolve until it developed into the comprehensive style of thought exhibited in much later legislation; (e.g. the Robens' Committee of 1972). The Industrial Revolution did not happen all at once. (More, 1989) The early legislation was necessarily piecemeal because the Industrial Revolution was still in progress. New sets of circumstances that had hitherto been outside law makers' experience had to be assessed and legislated for; therefore the development of health and safety law was necessarily incremental. As well as this, resistance from mill and factory owners who were often magistrates too, had to be circumvented. This had been the status quo for so long that it had become accepted practice and therefore the mentality of those concerned was not immediately receptive to change. (Fielden, 1969) Conventions could not be swept away at a single blow; they had to be eroded 'little and little'. The Act restricted the working week for those aged nine to sixteen to seventy-two hours and forbade children under the age of nine to be apprenticed.

Again, no system of enforcement was devised for the legislation, and the Act left the matter in the hands of the justices although this method had proved impracticable since justices were themselves proprietors of mills and factories. They were more interested in maximising their profits than in taking care of their workers. From that time onwards a succession of Acts of Parliament and statutory regulations dealing with safety in the operation of machines, hours of work, meal-times, and holidays for children, the employment of children, young persons and women, were introduced (Bartrip, 1983). Further Provisions for the Regulation of Cotton Mills and Factories, and for the better Preservation of the Health of Young Persons employed therein, was enforced by an Act of 1825. The Act reduced the working day. However, the Act was silent on the subject of letting children clean the machinery or do other work during their meal-time, and it freed employers from responsibility in employing children under the legal age if their parents or guardians confirmed that they had reached that age. The Cotton Mill Act of 1831 extended the twelve hours working day to all persons under eighteen, instead of sixteen, and prohibited night work to all persons under twenty-one.

However, huge opposition rose against extending its provisions to all textile industries, thus its scope was only applied to cotton mills. Despite all these efforts to improve the working conditions, Factory Acts up to this period were ineffective because they only applied to the cotton industry, and had little impact on the conditions of work for other factory children (Doran, 1996). It was not until the 1830s that the “Factory Reform” movement got under way for further improvement. One thing was obvious, which was the growing concern regarding the enforcement the different provisions of the Factory Acts. The movement which was known as the “Short Time Movement” was led by a combination of popular radicals, trade unionists, and Tory paternalists in Parliament (Doran, 1996). A Bill was introduced in 1832 in the House of Commons that sought to limit the working hours of all children below the age of eighteen, to ten hours per day. The Bill was backed by a report on child labour in which children as young as four years of age told harrowing tales of over-work, exploitation and physical deterioration. This Bill was introduced by Michael Sadler, a Tory Member of Parliament.

After much debate it was clear that Parliament was unwilling to pass - Sadler’s Bill. Instead, it was agreed that there should be another Parliamentary Enquiry into child labour. Following this, there was both the call for another Enquiry, this time a Royal Commission, to examine ‘scientifically’ the factory-health problems and also there was an intention for the first time to devise a system of enforcement. The Royal Commission’s Report was acted upon, thus instead of a simple Ten Hours’ Bill for workers, the 1833 Act introduced a different response; this was one which provided an education provision and an administrative machinery in the form of a factory inspectorate (Henriques and Ursula, 1971). This shows some progress in the development of legislators’ thinking. They were beginning to think outside the box: acknowledging that child workers needed more than physical safety. They needed an education. With the passing of the Regulation of Child Labour Law of 1833 a real breakthrough for factory legislation was achieved and for the first time in British history factory inspectors were appointed (Selwyn, 2011). The Act provided for enforcement by four Government-appointed inspectors, with powers of investigation and prosecution. Establishing this approach in enforcing the law, the 1833 Act gained its prominent position in the history of factory legislation (Carson, 1974). For many, the Factory Act of the 1833 formed a turning point in the history of factory legislation and it made an unprecedented advance in administrative efficiency.

The inspectors had to report quarterly or half-yearly to Parliament. Factory inspectors had to be trustworthy or their appointment would have been futile (Henriques, 1971, pp. 10-11). The inspectors became recognized as experts on the administration of the factory laws, and their influence steadily grew. Reformers after 1833 realised that the demand for further restriction of children's working hours could no longer help in obtaining the ten hour-day and they diverted their attention to another large class of the factory force: namely the women. The restrictions of the working hours of children and young persons had led to women being employed in greater numbers, and their labour was cheaper than that of men. Thus, from 1841 to 1847 questions of the factory system were concentrated on women. The Government Bill of 1844 proposed to set the hours of young persons and women at twelve hours a day.

It is worth mentioning that the most important sections of the 1844 Act came from the recommendations and the suggestions of the appointed inspectors. Women were now included under the same regulations as young persons. The question of fencing machinery was brought in, by the inspectors, so that when the 1844 Factories Act was passed it required machinery to be safeguarded. No child, young person, or woman was now allowed to clean any machine whilst the machine was in motion. Although the 1844 Act did not alter the twelve hours of work and the working day required by the 1833 Act, some important amendments were made in the way of administration under the 1844 Act (Thomas, 1948). For example, the jurisdiction of magistrates was withdrawn and they also lost the power to make rules and regulations on their own authority, this being now transferred to the Secretary of State. Additionally, the Act had strengthened the inspectors' power in many ways; it gave the sub-inspectors the power to enter and inspect factories and factory schools; the inspectors were given a legal power to appoint certifying surgeons; two magistrates were required for hearing complaints rather than one as before. The withdrawal of magistrates' jurisdiction here went a long way to ensuring the enforcement of the Act. The Government-appointed inspectors, untrammelled by any conflict of interests, discharged their duties without prejudice. Furthermore, the 1844 Act increased the fines; this was an extremely important provision since magistrates formerly had the power to mitigate penalties; mill owners had found it more beneficial for them to overwork the children and pay the previously small fines. This was no longer the case.

2.3.2 Factory Acts and Other Industries and Trades: Widening the Safety-net

Children, young persons and women who formed the majority of the workforce in other unregulated industries rather than cotton mills and factories, were also suffering. They were usually working for long hours and in bad conditions. According to Sir Robert Peel, who owned a large cotton mill and who played an important part in introducing the Act of 1802, the working conditions in these unregulated industries were worse than those in the cotton industry; he raised a crucial question: “Is it right to deal only with one branch of industry and leave others altogether untouched, in which it appears that female children work fourteen, fifteen, or sixteen, or even as much as eighteen hours a day?” The application to extend the Factory Acts from one industry to others was accompanied by a change in the attitude of the Parliament and the public towards the system of regulation and inspection which had been gradually developed in the textile industry.

Knowledge of the working conditions of children employed in the cotton factories was an important element for the legal regulation of this industry. In line with this the public knowledge of the excessive labour and unsanitary conditions in other industries began to spread, and new debates by different Government Commissions over the extension of the Factory Acts took place from the 1840s onwards. This was partly because the restriction of the working hours for children, young persons and women in one industry did not prevent anyone from employing them in the unregulated industries. This, in consequence, had its impact on the efficiency of enforcing the law in these industries. The first industries to be regulated, outside textile weaving and spinning, would be those most closely connected by the location and nature of the work. It was found by the 1843 Commission that a large number of children and young persons were employed in print work. The hours of work in the machine room were excessive and the machines were kept at work until late at night. Overwork and night work in the print industry was found to be common practice. Therefore, various recommendations were made as a result of the investigation; among them were the abolition of night work for children and new provisions for education to be enacted with, a reduction in children’s hours of work in order to enforce attendance at school. Parliament refused to include the bleaching and dyeing industries in the Print Works Act of 1845 on the grounds that these industries were difficult to control because of their nature and irregularity.

The irregularity of orders, for example, requires the bleacher to keep workers at work for long hours in order to carry out these orders. The nature of this industry needed to be considered when it came to regulations. Working hours in the bleaching industry were variable and heavily reliant on the timing and the amount of orders. Orders may vary from one season to other; however, after a considerable investigation into the condition of the bleaching and dyeing industry, evidence had been produced showing excessive hours of work for women and young persons in this industry which ought to be reduced. The long struggle to regulate the bleaching industry reflects the long standing approach in the area of health and safety in the UK which has been built on reasonability and flexibility. Such an erratic industry would not benefit from general, one-size-fits-all regulations because not every event was predictable. Reasonableness and flexibility had to come into play so that the regulations would be appropriate to the conditions. An important step was taken in 1870 to increase the efficacy of the various Acts relating to print, bleach and dyeing works which consolidated these Acts together. On the other hand, further evidence had been given about the working conditions of other industries which had injurious effects on the health in general.

Thus recommendations, based on the various enquiries, were inclined to extend the Factory Acts to these industries with some modifications and certain exceptions. For example, in the lace-making industry, it was common to employ children as young as three or even two years old. Women worked at lace mending, drawing, running their businesses at their own houses with their own children and they very often worked for hours as long as those in lace making itself. Therefore, it was concluded by the Children's Employment Commission of 1842 that any protection for children in the different processes of lace finishing should be extended to Mistresses' houses and private houses. It was also recommended that the Factory Act, with particular modifications, should be extended to private houses and small workplaces. So, homeworking is not a new idea. Today there are piece-workers and computer workers who work at home and are experiencing similar problems to those endured by their forerunners at the time of Industrial Revolution.

2.3.3 Factory Acts and Non-textile Industries: New Focus on Health Issues

The movement towards further expansion of the Factory Acts to reach other unregulated trades and industries was in motion. On August 15th, 1861 a request for a new enquiry into the conditions of employment of children and young persons in these industries was clearly made by Lord Shaftesbury in the House of Lords. The domino effect occurred. Once that had begun, it was a natural progression in the evolution of socio-industrial thought that other industries would be scrutinized and workers would start to examine their own circumstances. This showed a growing awareness of the risk attendant upon a variety of industries; perception was becoming broader. Employing children at a very early age for long hours, was also one of the main features of unregulated industries such as pottery, glass, metal wares, hosiery and many others (Kirby, 2009). In order to include these industries in the Factory Acts, additional information was needed. Therefore, a third Commission on the Employment of Children was appointed and it issued its first report in 1863. The appointed Commission found that in addition to the long, irregular hours and allowing children at a very early age to be employed in the pottery industry, there were particular dangers to health attached to this industry, such as high temperature.

Thus, the Commission asked for the appointment for a medical inspector, with power to enter, inspect and examine all potteries with respect to their construction, ventilation and other processes that had an impact on the health of children and young persons employed there. It also required the employer to record in writing any defects that might have come to his knowledge. With this power the medical inspector was seen by the Commission to be the right person to recommend “special rules” under the permission of the Secretary of State, to protect those who were working under these unhealthy conditions. In other industries including lucifer match making, percussion-cap and cartridge-making, the working conditions were even worse. Children, girls and women all suffered from being employed for excessive hours that sometimes lasted until midnight. In addition to the fatigue of working excessively long hours, there were also the considerable health hazards which were attendant upon working with dangerous substances, e.g. phosphorus, cordite, and sulphur (Marshall, 1973). These substances caused serious health problems including damage to the respiratory system, eyes and nervous tissue. All these trades were brought under the Bill of 1862 which was passed in the same year.

This Act brought these industries under the Factory Acts that were in force at the time. Children, young persons and women were also employed in small working places, for example in their own houses or in the backs of tailors' or milliners' shops, working under unhealthy conditions without any limit to their hours of work. Thus it was recommended that large factories, workshops and private houses should be placed under legislative control. It was also recommended that workshops, large and small, should be brought under the factory inspectors or under the supervision of the local sanitary authorities, in cases where the former were not available. These recommendations were welcomed by a considerable number of manufacturers who were willing to put into action the ten- and-half-hour day before they were enacted. This reflects a new attitude of the manufacturers towards state control. They believed that improving the working conditions of their factory force would eventually result in their mutual benefit. Healthy workers would be more efficient, therefore the industries would be more successful (Kirby, 2009). During this period there was a new desire that drove the movement of extending Factory Acts to industry after industry and to all workers.

Commissioners were in favour of making no distinction between large and small workplaces when it came to enforcing the law. In their reports they made it clear that while regulations were necessary in factories, they were needed still more in small workplaces. Thus, the principle of collective control of all workers was encouraged by the Commissioners. This reflected the desire to make the law more compressive and to ensure, insofar as could be managed, that all workers of whatever class were protected by the law. A Factory Extension Bill, accompanied by another Bill for the regulation of workshops, was introduced into the House of Commons in March 1867 in order to extend the Factory Acts to unregulated trades and industries (Fielden, 1969). It was conceded however, that all workplaces could not be effectively dealt with on the same scale. In other words, it was admitted that though Factory Acts should be extended to cover all workers in the unregulated industries and trades, this needed to be done with careful modifications. So it was suggested by the commissioners that a dividing line should be laid down between large and small workplaces in terms of the number of persons employed. Therefore, the Workshops Act was passed in 1867; it was applicable to any workplaces in which fewer than fifty persons were employed in any manufacturing process, except factories which were already included under the Factory Acts.

By definition, the Workshops Act of 1867 was seen as being more general and comprehensive than the 1864 Act. It was applicable to everyone “Employed” in any handicraft and “Workshop” whether for wages or not, under a master or under a parent. This was a foreshadowing of the situation in which modern home workers find themselves. The fact that they do not work outside their own residence does not annul their right to the protection of health and safety law. In this respect the Workshops Act of 1867 was the more inclusive, because the 1864 Act included only places where persons worked for hire, thus children working with their parents without wages were excluded by the latter. The Workshops Act of 1867 made no distinction of workplaces between factories and workshops and this was welcomed by manufacturers. Manufacturers viewed the regulation of workshops as equalizing the enforcement of standards; they had to meet the requirements of the law and the owners of smaller enterprises should, in justice, be obliged to do the same. In addition to this the extension of the Workshop Act ensured the safety of some of the most vulnerable workers, mainly children. Despite this desire to consolidate the various Factory Acts, the Royal Commission which was appointed in 1876 to consider the unification of the factory and workshop laws, was faced right from the beginning with the different demands of the Acts. Workplaces at the time were divided into three classes where they were defined and regulated by different Acts. This first class of factory was regulated by the 1874 Act and modification was not permitted to the regulations. The second class comprised factories in general, in which the daily working hours were fixed, though some exceptions were allowed which caused a great deal of complexity in enforcing the Acts. The third class to be recognized as a manufacturing industry was that of workshops. Workshops differed from factories by the number of people employed in them. Where fifty or more people were employed in the workplace, this was recognized as a factory and then as such would be subjected to stricter regulation under the Factory Acts. By contrast, when less than fifty people were employed this meant that the workplace came under the designation of a workshop and as such enjoyed less control in terms of hours of work and employment conditions.

Today’s home-workers are the modern equivalent of this category. This inequality and the differences between factories and workshops made it difficult for the inspectors to enforce the law (Bartrip, 1983). Therefore, the Commission of 1876 was convinced to extend the factory “Period of employment” to workshops so that the limits of hours for work would be

the same at both premises. It was also recommended that other provisions of the Factory Acts should be extended, for example, the provision relating to the fencing of machinery. It was in the light of these recommendations that the 1878 Act was introduced. This Act got over the previous division line between factories and workshops that were dependent on the number of employed people. Instead of this impractical method, The Act covered textile factories, non-textile factories, workshops in which children, young persons and women were employed and also workshops where no children or young persons were employed, as well as domestic workshops in which only members of the family were employed.

2.4 A more Comprehensive Interest in the Health and Safety

In the later part of the nineteenth century, subsequent Acts were introduced which had taken a wider direction than the early Factory Acts. These Acts generally represented a new interest in health and safety issues at the workplaces. Among these Acts was that of 1883 which made it illegal to run a white lead factory without being authorized by an inspector. The Act was not the first act to be introduced for white lead factories but it can be said that new areas of progress in the health and safety issues had been achieved by the 1883 Act (ss. 2 to 6). This reflects the diversification of State control of industry into the fields of hygienic issues in domestic workshops and homework, which gained increased attention in the closing decades of the nineteenth century. Another Act which contained important provisions for health and safety was that of 1891, which stopped the factory occupier from employing women during four weeks from giving birth “An occupier of a factory or workshop shall not knowingly allow a woman to be employed therein within four weeks after she has given birth to a child” (Clause 17, the Factory Act 1891). The clause became law but it was seen to be ineffective by the inspectors since women had to return to work as soon as they could because they feared losing their position. There are some modern cases of women who were recently sacked for being with child, or who were demoted when they did return to work. For example, Mrs Alison Balch, a part-time worker was working at a Royal Mail Delivery (Dyce Office-Aberdeen) in Scotland and was unfairly dismissed in 2009 for taking time off to care for her asthmatic son.

The changing attitudes about collective control and State intervention among the owners of the workplaces, inspectors, and the public had grown. Thus, the attempts to bring as many industries and trades as possible under the legislation continued. The scope of thought on the subject of workers' health and safety widened still further. It was becoming clearer to the lawmakers that workers' needs were manifold and that catering for them was just. It was also in the interest of businesses and by extension, the economy. In 1896 a Departmental Committee was set up in order to consider the unhealthy working conditions in certain industries and processes. Among these were wool-sorting and lead work. However, it was not until the Factory and Workshops Act of 1901 that a comprehensive piece of legislation was enacted and all the previous law was consolidated into one statute. One of the most notable things was to give power to the Secretary of State to make regulations for particular industries, a power which was used extensively to control a large number of different industrial processes. In 1916 this power was extended to permit Welfare Orders to be made, dealing with washing facilities, first aid provisions, and so on. This Act was followed by a series of detailed regulations and it remained the principal statute for the regulation of factories until its repeal by the Factories Act of 1937 (Cotter, and Bennett, 2009). It seems extraordinary that one of the most hazardous occupations, namely coal mining, was virtually unregulated apart from the 1911 Coal Mines Act. The miners had no safety equipment except the Davy Lamp, no medical staff at the pitheads, and no rights if they were either killed or injured. For example, following the Gresford disaster of 1934, not only were the families of the 265 victims not compensated but the mine owners docked the pay of the dead because they died three quarters of the way through a shift (Real History of Britain: Britain's Black Diamonds, 2011).

A major breakthrough came in 1937 when the Factories Act was passed, it swept away the old distinctions between the different types of premises (textile factories, workshops and others) and made detailed provisions for health, safety and welfare. The Factories Act of 1937 repealed and replaced the Factory and Workshops Acts from 1901 to 1929 and other similar enactments. However, many regulations that were made under these superseded acts, including the legislation for dangerous trades, remained in force as if they had been made under the Factories Act of 1937.

Many new requirements were included in the 1937 Act, for example the important safety provisions relating to lifting tackle and cranes, floors and stairs, means of access and places of work, steam and air receivers. Electrical stations, ships under repair in harbour or wet-dock and works of engineering construction were also brought within the scope of the legislation. The Factories Act of 1937 had the power to make regulations governing dangerous processes or plant, although owing to the wide range of such regulations made under the similar powers of the 1937 Act, it was not found necessary to make extensive use of this power, save for bringing older regulations up to date and for regulating new kinds of industries. The Factories Act of 1961 came as an attempt to surmount the inadequacy and imbalance of the existing legislation at the time (Beck and Woolfeson, 2000). This Act, like its predecessors, contained power to make regulations governing dangerous processes and plants. In consequence a number of pieces of legislation were enacted. For example, the Fire Precaution Act of 1971 brought together provisions in a number of unrelated pieces of legislation dealing with particular classes of premises and particular activities and it was extended to all factories, offices, shops and railway premises by the Fire Precautions (Factories, Offices, Shop and Railway Premises) Order 1989, section. 1. 1989 No 76. In 1969 two important statutes were passed, the Employers' Liability (Compulsory Insurance) Act required that all employers carry insurance to cover potential liability to employees, and the Employers' Liability (Defective Equipment) Act provided that the employer is liable in negligence for injury caused by defective equipment even though the fault was that of a third party manufacturer or supplier. Although the aforementioned Acts were passed in different circumstances, they shared a similar objective that was to provide protection to a particular class of workers and to be applied to specific industries and processes.

Having considered all these Factories Acts it is clear that these traditions of law are criminal in nature. They all were based on 'reasonable practicability' which is obvious from the resistance and reluctance to impose high penalties on the employers i.e. the owners of mills and factories. This, as explained earlier in this Chapter, affected the enforcement system. On the other hand, civil law, particularly in the form of common law of negligence developed slowly because of some barriers that affected its evolution. In essence this applies to the doctrine of common employment where employers can escape liability if one of his employees were injured. As will be explained in Chapter 5 the tort of negligence is distinctive in nature from the tort of breach of statutory duty.

Potentially these aspects of civil law in the area of health and safety are relevant considering the case of NSWs where they are covered by the law of tort but not perhaps so much by contract, as many NSWs might be classified as self-employed and then fall from the safety net available to those who enjoy the status as employees.

2.5 The Robens Report: Findings and Effects

A variety of factors led to the introduction of the century-and-a half of legislation already outlined. In the face of this there was public anger at the gross exploitation of workers, particularly children and women and the deficiency in the way the law was implemented. Thus additional questions about the effectiveness of the successive enactments arose and a growing concern about the number of reported accidents continued. Moreover, many new hazards such as the exposure to chemicals, lead and other substances that were not known before, were experienced, which should be included and brought under legislation (Beck and Woolfeson, 2000). In addition to this there were different socio-economic changes including the steady growth of some forms of NSW such as part-time and self-employed. According to the HSE (2007) in the early to the mid-seventies there were 3.8 million part-time workers and 2 million self-employed. Coupled with this the 1970s saw the increase in the power of trade unions. Beck and Woolfeson (2000, p.36) stated that:

“The creation of new health and safety legislation in the early 1970s similarly reflected a strengthening of trade union power. Following over a decade of almost uninterrupted membership had researched 10.6 million in 1970, constituting almost 50 per cent of wage and salary earners. Promoted by a series of major industrial accidents as well as growing demands made by TUC congress, the Labour Government of Harold Wilson set up the Robens Committee on Health and Safety, with the task of reviewing and reforming existing health and safety legislation.”

Therefore in 1970 a Committee on Health and Safety at Work was appointed under the chairmanship of Lord Robens to examine the whole problem of workplace health and safety. Its stated mission was:

“To review the provisions made for the safety and health of persons in the course of their employment ... and to consider whether changes are needed in: the scope and the nature of the major relevant enactments, or the nature and extent of voluntary action concerned with these matters.”(Committee on safety and health at work: Report of the Committee 1970-72. Cmnd; 5034, Para. 1)

In its Report the Robens Committee reached some crucial conclusions. Among these was the concern about the growing number of work accidents in which people were killed or injured. These accidents continued to take place each year despite the well-recognized regulatory system of legal controls. In addition, the Report concluded that the existing legislation was very detailed which made it difficult to alter or amend. On this account, a redesigned legal framework was set up, containing the innovative concept of self-regulation applied to all types of employment. Furthermore the report stated that the various enforcement authorities had similar jurisdictions in some areas which caused some confusion. It can be said that the main conclusion of the Robens' Committee was that there was indifference toward accidents and ill health at work by the majority of employers and employees. There was a controversial element in the Report, in the shape of a proposal that primary responsibility for remedying the level of occupational accidents and illnesses lay with the creators of such risk and those who worked therewith. The Report proffered legal instruments to encourage employers to exceed minimum legal requirements and regard the safety of employees as a normal business goal. However, the Robens Report was criticized for paying inadequate consideration to the various categories of NSW (Barrett and James 1988). The Report recommended that there should be: "A comprehensive and orderly set of revised provisions under a new-enabling Act...". Thus, the HSWA 1974 was born. This HSWA 1974 supersedes, in the main, the Offices, Shops and Railway Premises Act of 1963.

The provisions of the 1974 Act relating to health, safety and welfare in connection with work are principally contained in Part I (ss. 1-54). The HSWA of 1974 was seen by many as an important piece of legislation. It adopted a different approach to the health and safety at work from the one which was applied under previous legislation (James, 1992). It applies to employment generally, and not to specific classes and categories of employment only. The Act applies to all employed persons, wherever they work.

This has brought 'new entrants' into the scope of the Act, which were not included by the previous regulations, as has been seen earlier in this Chapter. It imposes legal duties and requirements not only on the employers and the employees but also on those who manufacture, import, design or supply articles and substances which are to be used at work. The Act fulfilled another of Robens' recommendations: that there be a unified national health and safety authority and a unified inspectorate. The Health and Safety Commission and Health and Safety Executive were created. They operate alongside the Local Authorities Inspectorate under the ultimate control of the Secretary of State. The Commission is empowered to issue the Code of Practice for the purpose of providing practical guidance with respect to the requirements of any statutory provision in relation to health and safety at work. The Executive, which is under the general control of the Commission, is the body principally responsible for enforcing the 1974 Act. The 1974 Act empowers every enforcing authority to appoint inspectors who have the competence to issue improvement and prohibition notices, requiring the correction of breaches of the statutory provisions or directing the termination of activities giving rise to the risk of serious personal injury. The functions and duties of the factory inspectorates and others have now been transferred to the health and safety inspectorate.

One of the primary means by which the objectives of the Act are achieved, in order to ensure the health, safety and welfare of persons at work, is the making of Regulations to repeal, modify, replace or add to the existing body of statutory instruments. These Regulations and the Code of Practice to support them are required, as clearly stated in section 1 (2) of HSWA 1974 to fulfil a particular aim, that is: "Designed to maintain or improve the standards of health, safety and welfare established by or under the existing legislation". The HSWA 1974 was hailed as a significant advance for organized labour and a model of modern workplace regulation (Beck and Woolfson, 2000). It has been mentioned earlier that the HSWA of 1974 spreads its net more comprehensively as can be seen from section 2 of the Act which imposes a general duty upon the employer to ensure so far as reasonably practicable, the health, safety and welfare, at work, of his employees. Employees include persons who work under a contract of employment or apprenticeship (Kloss, 2010).

This limitation of the HSWA 1974 has raised the question about the legal position of a considerable number of workers who are being excluded from many legal rights, such as those working temporarily on the employer's premises, including agency and casual workers. This will be further discussed in detail in the next Chapter.

2.6 Conclusion

During the course of the nineteenth century, a series of legislative measures were introduced which sought to regulate the environment in which people worked. These measures aimed primarily at protecting women and children by restricting the number of hours they could work and prohibiting their employment in more dangerous trades where workers were at risk of developing industrial disease or being injured. It was considered important for the purpose of this Chapter to examine not only the economic transformation of the UK brought about by the Industrial Revolution but the social transformation as well. From all these legal and social changes, thus far, it can be seen that a vast alteration has occurred over the past two centuries, in the way in which the legal system functions in relation to health and safety at work. There is no doubt that the Factory Acts which marked a century and half of the history of health and safety law in UK had their impact on the lives of working people who were affected. Each piece of the factory legislation was applied either to a particular class of workers or particular processes and activities. This approach was attacked by the reformers on the ground of its limitation. In addition, there was a growing concern about the state of these Factory Acts because of problems with their efficiency and enforcement.

More legislation was introduced throughout the twentieth century which adopted a different approach from the early Factory Acts in terms of enforcement and more involvement for employed people in the cause of health and safety at the workplace. Furthermore, an increasing range of workplaces and industrial accidents and illnesses were brought within the scope of the law. The main feature of the traditional legal protective framework was that it was largely criminal law which was enforced by inspectorates and sanctions. The standard employer-employee relationship was the context within which labour law, collective bargaining and the social security system developed. In this context, both employers and employees have shared duties when it comes to health and safety at the workplace.

These duties are qualified by the long-standing concept of 'reasonableness'. This will be considered in Chapter 4 of this thesis which will focus on the current legislative framework in the UK. The development of statutory provision for health and safety at work brought about by the Robens Committee and the HSWA 1974 occurred shortly after Britain joined the 'Common Market' by enacting the European Communities Act 1972, and led to twenty years of unprecedented change for health and safety at work.

CHAPTER THREE

Change: From Standard Work to Non-standard Work

3.1 Introduction

As has been explained in Chapter 1, the rise of NSW is one of many changes that were the outcome of a number of socio-economic and political changes in the UK in recent decades. In this context, NSW represents an important change in the nature and structure of the workforce and employment relationships in the UK. Although full-time, permanent employment is still the norm in the UK, (Office for National Statistics, 2011), NSW has become one of the increasingly prevalent aspects of the labour market over the last 30 years. Several other terms such as ‘atypical’, ‘marginal’ and ‘vulnerable’ have been used in the existing literature referring to NSW which all pertain to employment patterns that are not stable, regular, or open-ended, with a single employer.

NSW constitutes a central element in the debate on the future of work and employment relations in terms of its extent and significance. The consequences of the changing nature of work which have developed as a result of the increase in NSW, in particular, on the health and safety of those involved, will be at the heart of this Chapter (see Research Questions 1 and 2, p. 3 above). This Chapter will evaluate the extent of the growth of NSW in the UK, as the ultimate aim is to provide a clear picture of NSW, its incidence, its nature and its location within the legal framework in general, and with reference to health and safety in particular. The intention is to shed a light on the complexity of NSW, especially in terms of the range of work patterns, the people involved, and their skills-level, paying special attention to the possible indicators of “vulnerability”, including the matters of pay and job security (TUC, 2008). This will enable the discovery of any occupational risks, and the consequences for health and safety issues which, according to some such as Donaghy (2009, pp. 42.43) are high for some NSWs.

3.2 The Main Catalysts for NSW Arrangements

Since the middle of 1970s, not only has the economic landscape changed but the whole essence of the UK, as one of the modern developed societies, began to undergo changes in every aspect. One striking feature of social change was the dramatic increase in the number of mothers who wished to hold down jobs and also nurture their children (Great Britain: Institute for Employment Studies: October 1995) “The most notable changes have occurred among women with children under five, 43 per cent of whom now work, compared with only a quarter in 1973”. The nature of work has changed from manual labour-based industries to skill- and knowledge-based industries with greater requirements for specialists and professionals in organisations. New patterns of work, besides the conventional full-time occupations, were emerging. With the growth of the labour force over the years as a result of important demographic changes in its composition, such as the increased number of women workers, and the falling capacity of the state to create sufficient employment (The Telegraph, 2010) a gap was widening in the labour market and so unemployment became a critical issue around the mid-1970s.

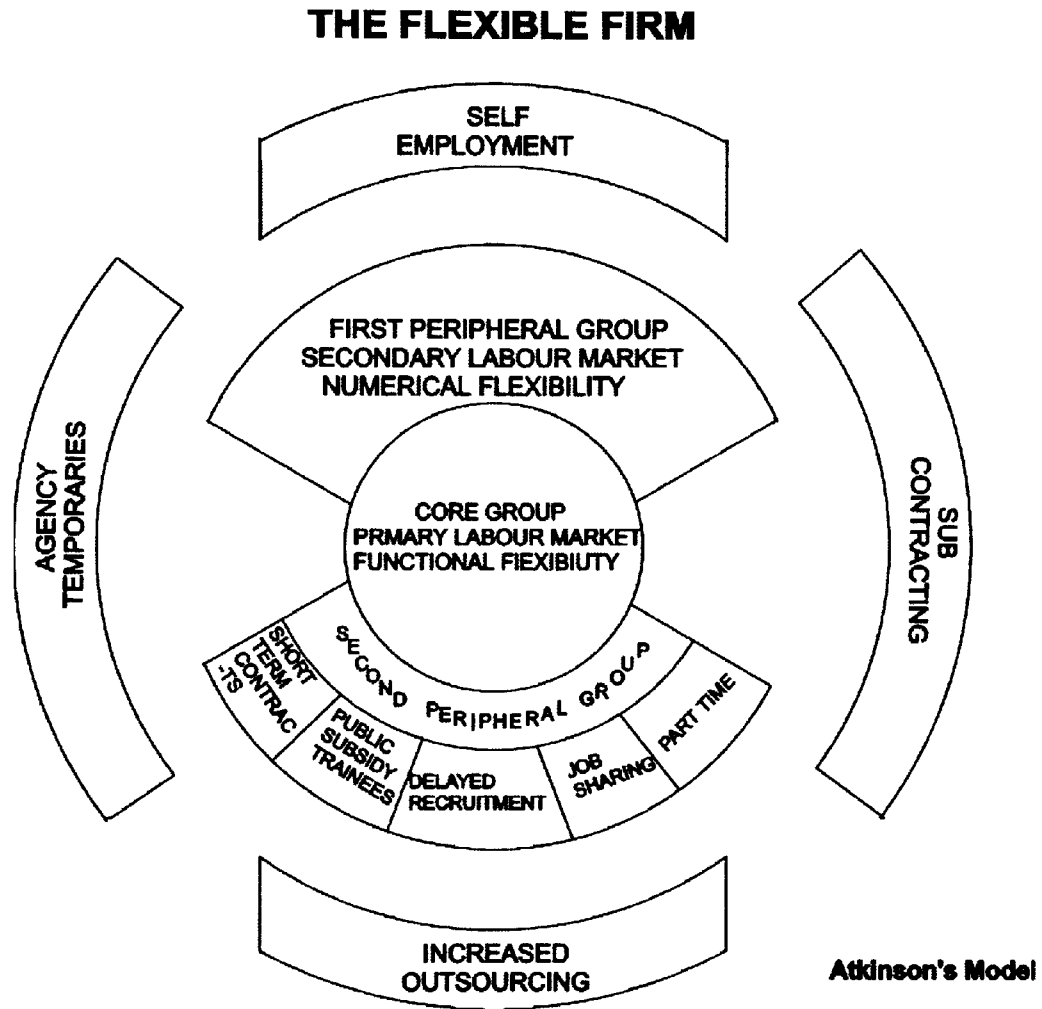
The option to close this gap by creating more jobs on a full-time permanent basis was problematic. Thus, a new agenda was opened up by encouraging new patterns of work that are distinct from the conventional standard model of work. It can be said that signs of the changes in the nature of work witnessed since the late 1970s and 1980s were only a prelude to a more serious economic, political and societal change that was still to come. The economic demands for change were underpinned by political pressures as the elected Conservative Government in 1979 supported new economic policies and encouraged employers to reconsider their employment practices. The government at the time gave priority to the market principles and labour flexibility by introducing new ways of organising labour, which loosened the contractual bonds between employer and employee. Thus, flexibility was seen as very important in terms of enhanced productivity and in particular, arguably, the dominant need for employers to reduce their labour costs (Leighton et al. 1989). The flexibility of the labour market takes many forms and what is meant by labour market flexibility is not straightforward. However, what is clear is that flexibility means different things to different people.

CHAPTER THREE CHANGE - STANDARD WORK TO NON STANDARD WORK

For some, flexibility is about adaptability and employability, which in turn requires mutual respect for the interests of employers and workers. For others, pseudo-flexibility became the fruit of deregulation, so the main feature of such pseudo-flexibility was the abdication of responsibilities for the workforce, and the absence of employment rights (Edwards, 2006). As already explained, flexibility can be sought for a number of reasons but it is the flexibility of the workforce which has captured considerable attention and controversy from the 1970s to the present day. To clarify this: it was the rapid spread of NSW that fuelled the debate about the flexibility of the labour market in the UK at different levels. Four aspects were usually identified in connection with the increase of labour market flexibility: changes in technology, products, jobs and employment contracts. Virtually every aspect of these plays an important part in the increase of labour market flexibility. For the purpose of this research only the changes in jobs and employment contracts is concerned where flexibility is achieved by reducing the number of workers, thus saving on labour costs which describe 'numerical flexibility'. Here, firms employ on a permanent and full-time basis only those workers who can be fully occupied for 40 hours per week. Other capacity is achieved by other means.

Firms employ workers on a temporary, part-time or casual basis or they sub-contract out certain activities for which there is insufficient demand on a permanent basis (The Department of Trade and Industry (hereafter DTI) 2006). Flexibility can also be obtained by the way in which workers are moved around from job to job within the same firm as required, which is referred to as 'functional flexibility'. However, when it comes to what is really meant by labour market flexibility, Atkinson's model cannot be discounted. Atkinson's model is controversial in the sense of explaining the theory of flexible firms but it does cover the idea of pushing people from the core to the periphery and therefore distancing them from the core and management of firms.

Figure 3.1 'Atkinson's Model' of the flexible firm: "functional and numerical flexibility" (1984a)



It is fair to say that alongside the aforementioned motivations and interests driving flexibility, there are also the desires of individuals who freely choose flexible employment because they like the freedom of choice and the autonomy of time-management. Leschke (2011, p. 8) claimed that atypical employment and in particular part-time, is regarded by some as an “appropriate solution” for combining job and family responsibility, especially childcare. Thus many voluntarily choose to work in the different forms of NSW, especially women who dominate part-time employment (Leschke, 2011). Working part-time, for women, offers an appropriate opportunity to find a balance between work as a way to earn extra income and having family and care responsibility. This will be further discussed in this Chapter as well as in Chapter 6, the empirical work.

3.3 The Incidence of NSW and Its Main Categories

As explained in Chapter 1, NSW arrangements are not a new phenomenon (Stone, 2006; Mouriki, 1994, p. 2). For example, the UK has a long tradition of short-term work, where temporary work agencies have existed for several decades (Hakansson and Isidorsson, 2005). There is also working from home, as a range of activities such as sewing, packing and telesales have traditionally been carried out by home workers. These forms of home working remain widespread, but the increased use of information technology over the years has added to the numbers of people working at home. In other words, NSW arrangements are not novel (McLaren et al. 2004). What is new is that employers are seeking greater flexibility than ever before and many changes have occurred in employment patterns within the UK.

Table 3.1 shows the incidence of the main types of NSW (millions) between 1992 and 2012.

The type of employment	Autumn 1992	Autumn 2012
Part-time employees	5.905	7.933
Self-employed	3.086	4.131
Temporary workers (Fixed-term, Casual workers, Seasonal and Temporary agency workers)	1.320	1.575

Source: Labour Force Survey: Office for National Statistics 1992-2012

According to the report of the Commission on Vulnerable Employment (May 2008, p.5) 80 per cent of employers in the UK now subcontract parts of their business. In addition, part-time workers constitute a third of the workforce in the UK in 2010 according to the Labour Force Survey (hereafter LFS) September 2010 and the number of teleworkers has dramatically increased. According to the Labour Force Survey, teleworkers are classified as people who use telephone and computers as their main instruments of business and work away from the employers' premises. One of the most striking trends in the composition of the labour force in the UK over recent years has been the growth in self-employment. There is no universally accepted definition of self-employment and the LFS relies on respondents to classify themselves. Self-employment is concentrated within certain industry groups, in particular agriculture, construction, distribution and finance, information technology and other professional occupations.

CHAPTER THREE CHANGE - STANDARD WORK TO NON STANDARD WORK

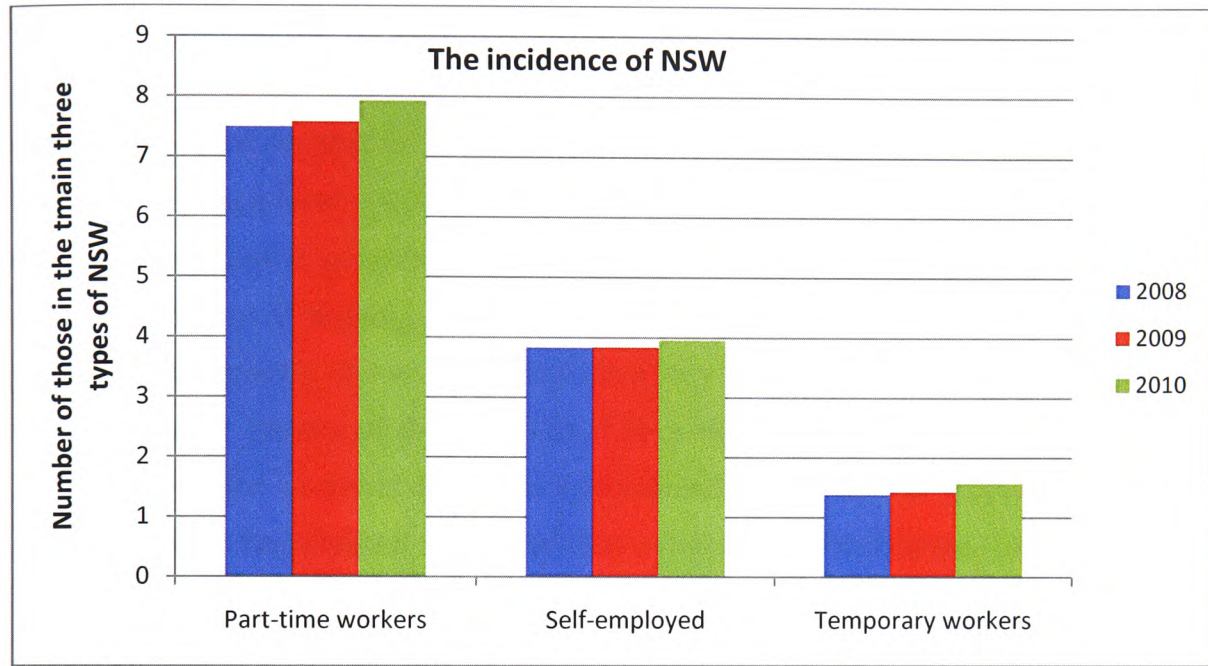
Generally, the self-employed are a diverse group, ranging from well-paid professional financial consultants to low-skilled construction workers. It should be borne in mind that it depends on which category is being considered, for example, the majority of part-time workers are women whereas the self-employed are more likely to be men (Office for National Statistics, 2010). Furthermore, temporary work agencies have grown rapidly in the UK in the last two decades (Purcell, Purcell, and Tailby, 2004, p. 705). Whereas the employment agency will have permanent, full-time administrative staff, the workers who find employment through the agency are properly classed as NSWs because their period of employment will be brief, fixed-term and sporadic, even if very well-paid. As explained earlier, NSW is commonly used to describe types of employment that are, in a narrow sense, not permanent and/or full-time. This can be clearly seen from the definition given by the LFS which is the principle source of statistics in the UK for temporary employees as these are defined as:

“Employees who say that their main job is non-permanent in one of the following ways: fixed period contract, agency temping, casual work, seasonal work, other temporary work.”

Based on the definition of LFS, NSW encompasses three main types of employment: part-time work; temporary work and self-employment. As already noted in Chapter 1 there are also other types such as homeworking, teleworking, agency working and subcontracting. However, most of these overlap in some way with each other. For example, about three quarters of British home-workers work part-time and almost half define themselves as self-employed (Felstead, Krahn, and Powell, 1999, p. 278). Thus, it is usually difficult to draw a clear line between the various categories of non-standard employment. However, some forms are more common than others; hence it is relevant to discuss the most common types. Among these are part-time work and temporary work which includes fixed-period contract, casual and seasonal work. The main aspects of these forms will be considered in terms of their incidence and what challenges they might raise. It must be said that over the years the growth of NSW is usually linked to the overall economic situation. Experience has shown that all types of NSW have increased when the economy has gone through difficulties and unemployment has risen.

An obvious example of this is the recent growth in part-time work during the years of the current economic crisis in the UK since 2008: Figure. 3.2 below is based on the LFS of 2008, 2009 and 2010.

Figure 3.2 the incidence of NSW



Source: LFS, Office for National Statistics 2008-2009 and 2010

This illustrates the growth in the incidence of the three main types of NSW in the UK during times of difficulty where unemployment is still on the rise.

3.3.1 Part-time Work

According to the LFS September 2010, the increase in total employment in the three months to July was mainly driven by part-time workers. They reached 7.962 million, which is the highest figure since comparable records began in 1992. In 30 per cent of all workplaces, part-time workers accounted for more than half of the workforce. It is also estimated by the HSE that the majority of new jobs in the UK to 2014 will be part-time (HSE, 2006, p. 1). Employing part-time workers is seen by employers as an effective way to keep costs down in areas where full-time workers are not needed. It is also a way to build in flexibility so that employers can respond to changes in demand and develop their business.

CHAPTER THREE CHANGE - STANDARD WORK TO NON STANDARD WORK

For workers, both men and women, the most common reason for working part-time, according to the LFS September, 2010, was that they did not want a full-time job. This confirms the fact that not all of those located in one of the main forms of NSW are working involuntarily. For many it is the most convenient way of working and they have chosen it willingly because it brings specific benefits in terms of flexibility and work/life balance; these they can balance against the security and long-term benefits of a full-time job. (Leighton et al. 2007). These advantages notwithstanding the fact that they work this way by choice, does not mean that the quality of the jobs is always acceptable. This will be further explored in the empirical research of this study. Part-time employment has traditionally been dominated by females and this is still the case. In the three months to August 2010, 5.256 million women were working part-time compared with only 1.501 million men. Part-time work is predominantly chosen by women as a way to alleviate the increasing pressures to contribute to the income of the family as well as dealing with caring responsibility (Kent, 2009). A part-time worker is defined in Regulation 2(2) of Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (amendment) Regulations 2002 as: “A person who is paid wholly or in part by reference to the time he works and, having regard to the custom and practice of the employer under the same type of contract, is not identifiable as a full-time worker”. It is clearly seen from this definition that the number of hours spent at work play an important part in the legal approach to distinguish between various patterns of employment relationships.

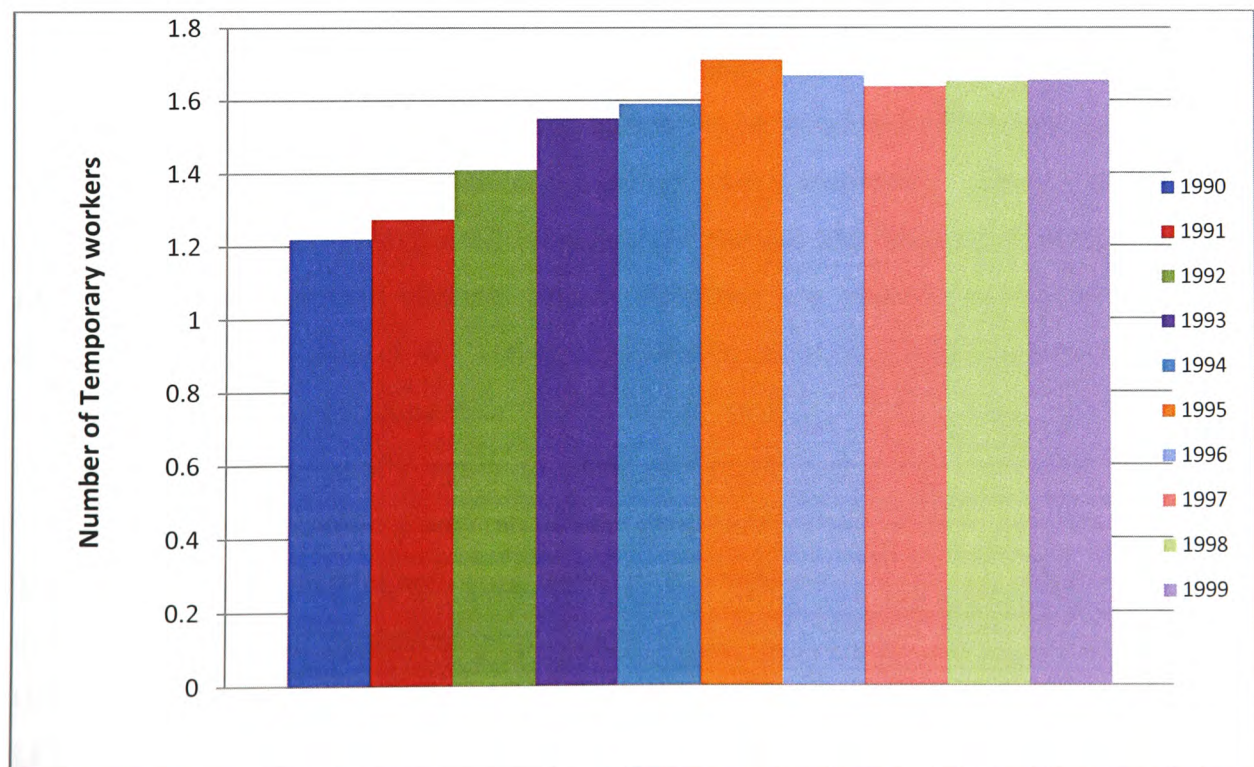
Under the same regulations part-time workers must not be treated less favourably than full-time workers. Any treatment that puts part-time workers at a disadvantage could risk a complaint to an Employment Tribunal or perhaps to a claim of indirect sex discrimination because the majority of part-time workers are women. Yet part-time work remains poorly paid and with few prospects. For example, in 2006, women working part-time earn on average 17% per hour less than men for full-time work (Great Britain: Equal Opportunity Commission (hereafter EOC) 2006, p. 1). Moreover, part-time workers still face discrimination at work because of their employment status. This was the case in *Sharma v Manchester City Council* [2008] I.R.L.R 36; S was a part-time worker with M's Adult Education Service. S brought claims in the tribunal, complaining that their contractual terms were less favourable, since the hours could be

reduced in a way which was not true for full-time employees, and that the actual implementation of that power, adversely impacted on their group of part-timers constituted less favourable treatment in the circumstances. The claim was successful, once it was found that the part-timers had been treated less favourably than full-timers and that being part-time was one of the reasons for such treatment, which would suffice to activate the right.

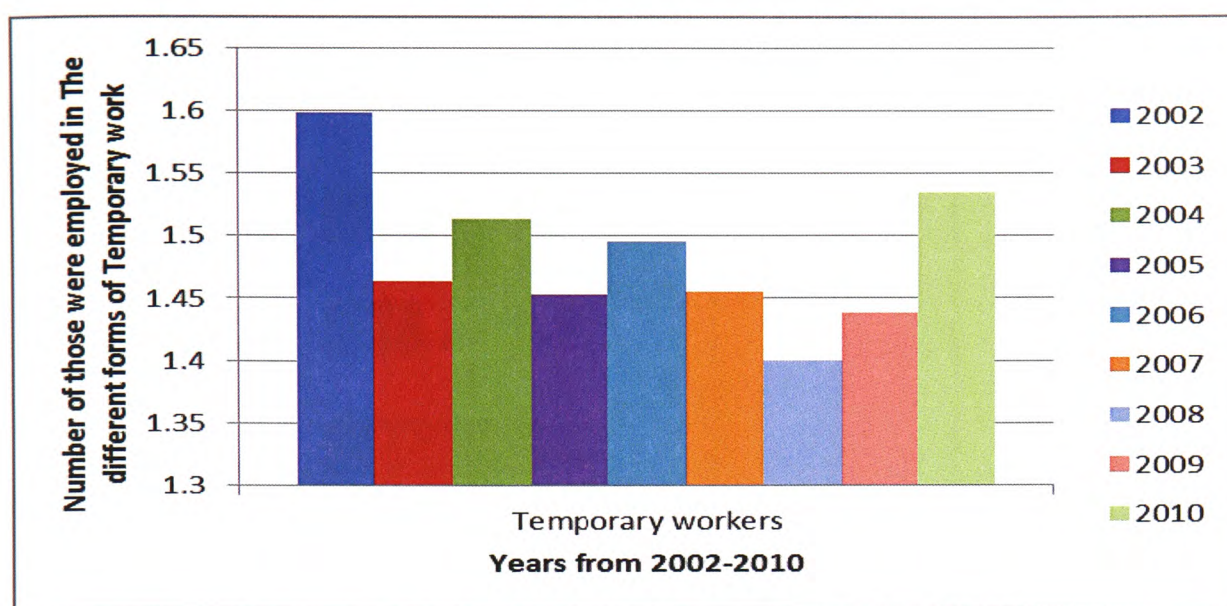
3.3.2 Temporary Work

The most common form of temporary work is fixed-term contract working, followed by casual work, agency working and seasonal work. Temporary work as a whole increased during the slow economic recovery in the mid-1990s to provide organisations with numerical flexibility in the time of uncertainty. In general, temporary work increased greatly between 1992 and 1998, at which point it levelled off. Furthermore, the greatest increases were between 1993 and 1995. There was also a significant increase between 1996 and 1997. Following that, levels remained more or less constant since 1998 (Great Britain: Office for National Statistics, 1990-1999)

Figure 3.3 the incidence of temporary work (millions) (1990-1999).



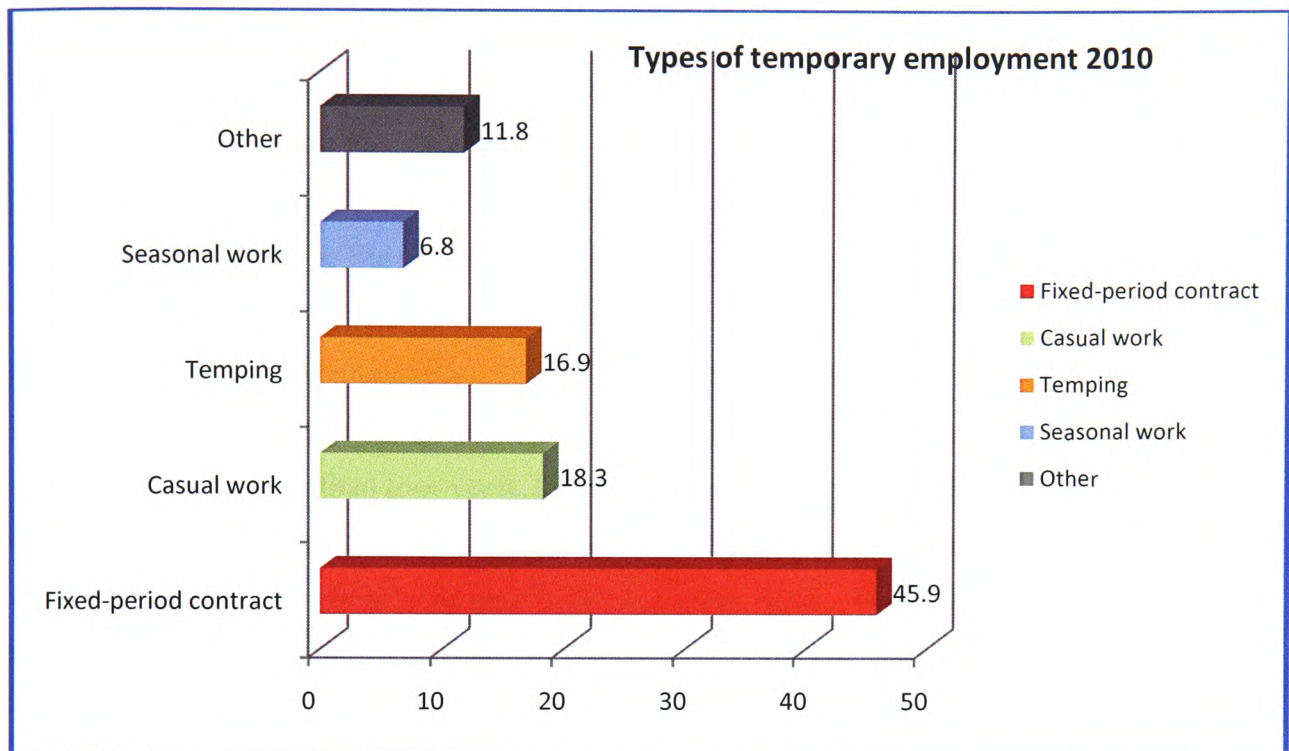
Source: LFS, Office for National Statistics (1990-1999)

Figure 3.4 Temporary workers: by type of employment (2002-2010)

Source: LFS, Office for National Statistics (2002-2010)

As can be seen from Figure 3.4, the incidence of Temporary work has fluctuated since 2002. A large number of those who are employed in temporary work decide to undertake such work because of an inability to find permanent employment (TUC) 2007). Temporary work is more prevalent among young workers and it is usually held by the less skilled. However, temporary workers are a diverse group and they are to be found in a wide range of sectors and occupations, working for both public and private sector employers. Many industries and professions employ temporary staff, including the nursing and teaching professions, where fixed-term workers prevail; banking, finance insurance and information technology; hotels and restaurants (McLaren et al. 2004). Moreover, temporary staff are needed to cover temporary absences and to cope with fluctuations in workload. There is not a comprehensive definition that can generally apply to what constitutes temporary work. However, the Organisation for Economic Cooperation and Development (hereafter OECD) according to Tucker (2002) (cited in McLaren et al, 2004, P. 11) refers to 'temporary employment' as an umbrella term 'for all dependent employment of limited duration'. This definition by the OECD of temporary employment agrees to a large extent with the definition given by the LFS. Temporary employment in the LFS refers to those who say that their main job is non-permanent in one of the ways shown in the figure below.

Figure 3.5 the main types of temporary employment in 2010



Source: LFS, Office for National Statistics

It can be seen that the fixed-period contract represents the majority among the other types of temporary employment (figures in thousands).

The temporary nature of most types of NSW is taken as the main criterion by which it may be distinguished from permanent, standard employment. According to the OSHA (2009, p. 34) temporary workers are subject to higher health and safety risk. This will be further discussed later in this Chapter.

3.3.3 Fixed-term Contracts

A FTC is one that is entered by the employer and an individual, coming to an end when a specific date is reached, or a specific task has been completed, or a specific event does or does not happen.

CHAPTER THREE CHANGE - STANDARD WORK TO NON STANDARD WORK

Examples of fixed-term employment are: to cover for the period of another employee's maternity leave or to employ a specialist to be taken for the duration of a particular project. However, the question whether a contract is for a particular purpose is sometimes complex, and can be significant because while the non-renewal of an FTC amounts to a dismissal, a contract for a particular purpose terminates without a dismissal once that purpose has been achieved. Fixed-term employment in the UK was subject to little regulation prior to the introduction of the FTER 2002. As explained in Chapter 1 the FTER were designed to implement in the UK the European Union (EU) Council Directive 99/70 on fixed-term work. The FTER 2002 gave FTC workers the right not to be treated less favourably than comparable permanent employees. Another important right available to those employed on FTC under the Regulations is that where an employer renews an FTC and the individual has been working for more than four years without any breaking of the continuity of their service, it will be deemed to become an indefinite contract. This latter right confirms how important is to be in a particular status to be able to receive more rights. However, some provisions of FTER 2002 were an area of concern for some commentators. For example, the notion of 'comparator' was criticized by some such as Koukiadaki (2009, p. 93) because of the lack of specification.

3.3.4 Casual Workers

There is no standard definition of casual workers but they are generally classified as independent contractors rather than employees, who are called in to work as and when they are needed (International Labour Office (hereafter ILO) 2004, p.1). The main characteristic of such NSW arrangements is that there is no obligation to provide work and no obligation to perform it. This is a result of having no implicit or explicit contract of on-going employment. Thus, casual workers are often denied employment protection rights because of this lack of mutual obligation. The element of mutuality of obligation is of great importance to casual workers and a number of examples of case law concluded that such an element is essential for the existence of employment of service. In *Clark v Oxfordshire Health Authority* [1998] I.R.L.R 125, Mrs Clark claimed unfair dismissal and race discrimination as an employee of Oxfordshire Health Authority. The Industrial Tribunal dismissed Mrs Clark's application on the ground that she had no employment contract with the Authority and thus she was not an employee.

CHAPTER THREE CHANGE - STANDARD WORK TO NON STANDARD WORK

The applicant appealed to the Employment Appeal Tribunal (hereafter EAT) which by a majority decided that the appeal should be allowed on the grounds that the applicant held a contract of employment with the Authority. The case raised the issue of whether or not the general engagement constituted a continuing arrangement which governed the whole of the relationship between the applicant and the Authority. This latter type of contract is frequently referred to as a “global contract”. The EAT accepted that the mutual obligations required to found a global contract of employment need not necessarily consist of obligations to provide and perform work. In other words, EAT found that, although there was no obligation on the Health Authority to offer work and no obligation on Mrs Clark to accept any work offered, there were other provisions in Clark’s contract which pointed to an employment relationship and were sufficient to confer employee status on Clark. However, the Court of Appeal overturned this decision and found that because there was no mutuality of obligation during the non-working periods and that this absence of mutuality of obligation was critical to a claim that no global contract existed.

This decision of EAT showed how vital is employment status for casual workers, in order to be able to claim various rights. This also shows that such workers are vulnerable in terms of employment security and protective rights. The question of mutuality of obligation seems to persist in the case of casual workers, to determine their employment status. In *Carmichael & Anor v National Power plc* [2000] I.R.L.R 43, two casual workers complained to a tribunal that they had not been given a written statement of particulars of their employment. Their work for National Power Plc (NP plc) was not full-time and they were only paid for the hours they worked. Income tax and national insurance were deducted at source and uniforms and vehicles were provided. However, they did not receive sick or holiday pay, they were not covered by any pension arrangements and the normal grievance and disciplinary procedures did not apply. The House of Lords (hereafter HL) ruled that the two casual workers were not employees due to the lack of sufficient mutual obligation between the parties as well as the absence of evidence of clear intention to have a full employer/employee relationship.

3.4 Non-standard Work and the Challenges for Health and Safety

Non-standard employment has raised serious concern not only about its implications in terms of the changing nature of employment relationships but also about the health and safety of those who are employed in its various types (Broughton, Biletta, and Kullander, 2010).

However, the identification of the extent to which NSW is precarious and affects those employed in its different forms, is not straightforward. The fundamental questions, in particular, are those of insecurity and protection (TUC 2008). The TUC (2008) postulated that insecurity is significant for health and safety. These problems were illustrated by much research carried out by different institutions of the European Union. Several of these studies have proved crucial to this research and brought to light important themes for the purpose of this thesis. Hence, the central aim of the research is to investigate the way in which NSW presents a challenge to health and safety law.

One such challenge might be to the management of employment agencies, who have to provide training for workers whose occupation is peripatetic. Facilities in the different locations in which these people work may vary considerably. It might also be argued that some forms of NSW are less likely to provide insurance or access to state benefits (Leighton et al. 2007). Another example of vulnerability is the situation of home-workers. These people are often engaged in piece work which means they are only paid for what they actually produce. The fact that they work from home means that they miss out on training provided on the employer's premises. This in turn means that they may not be adequately skilled and so they will work slowly and inefficiently, at least in some cases. Therefore, they would earn less than more skilled persons and may be at risk from accidents with equipment which they are not able adequately to manage. It seems that despite the benefits that can be gained by the economy, employers and workers, considering various studies on NSW, there can be significant problems. This was emphasised by Vogel the Director of ETUI (2004, p.25):

“They may be given the same legal rights on paper, but in practice, they often lack the guarantees typically enjoyed by workers with permanent full-time contracts. Most occupational health research finds that contingent workers are among the most vulnerable. They suffer a higher rate of work accidents and have less access to preventive services than others. They have less access to preventive services than others. They have less regular health surveillance. They tend to get less information

CHAPTER THREE CHANGE - STANDARD WORK TO NON STANDARD WORK

and training on work-related risk and more rarely have health and safety representation.”

Traditionally, employment protection legislation has been directed towards full-time employees. These conventional protections appearing as contractual conditions, that should be present to provide security and safety at work, might be absent in the case of some NSWs depending on the nature of the occupation. For example, home-workers are at the mercy of anyone who chooses to interrupt them and would feel obliged to make up the time taken by interruptions. As a result of this they may not always take breaks and so would be more vulnerable to fatigue, impaired concentration, and in the case of computer workers, at risk from repetitive strain injuries, tension headaches and eye strain. In terms of frequency of work, casual workers are at an obvious disadvantage, as they are not always employed. In other words, NSW presents significant changes in the world of work that bring new challenges with regard to worker's health and safety.

The OSHA (2007) in one of its recent reports highlighted such issues in terms of the working conditions of NSWs. These include risks that are linked to the way work is designed, organized and managed, as well as to the economic and social context of work, resulting in an increased level of stress and leading to serious deterioration of mental and physical health. These changes lead to emerging new risks that are different from those usually associated with work. It has also been postulated that non-standard workers are at especial risk compared with standard workers. Further, workers in some forms of non-standard work arrangements have inadequate knowledge about their work environment and receive less training. This situation leaves room for many potential pitfalls in the area of health and safety. It can be said that non-standard employment has challenged the health and safety law in terms of accidents and ill health. It represents different types of work from that which the legal rules have long dealt with. An obvious example of this which has been repeatedly brought up by various studies is the triangular relationship of the temporary agency worker. It is alleged that temporary agency workers are often not clear about who is responsible for their social protection: training and health coverage (EFILWC 2005-2006). The vulnerability of temporary agency workers was highlighted, from different perspectives, in a number of studies conducted by the European Agency for Safety and Health.

CHAPTER THREE CHANGE - STANDARD WORK TO NON STANDARD WORK

In one of its detailed reports about young workers and their prevalence in temporary agency work the OSHA (2007, p. 11) claimed that “According to data on temporary agency workers, people employed on temporary contracts have less access to training and participation in long-term competence development than workers with permanent conditions. Temporary workers also have less control over the order of tasks, pace of work and work methods, have lower job demands and are less informed about risks at work”. Furthermore, temporary agency workers are even less well-informed about risks at work. Research in the field of working conditions and health impacts indicates that workers engaged in temporary agency work in common with workers in other flexible and non-standard types of employment, are more exposed to risk factors than permanent workers (Fudge and Owens, 2006).

A recent example of the vulnerability of temporary agency workers was given in the Health and Safety at Work Magazine in the UK in the April 2009 edition. This highlighted a case of an agency worker who did not have any induction training to do his job and was injured after only two weeks working as a driver. The injury was the result of lack of training and failure to conduct an accurate risk assessment. The vulnerability of some forms of NSW can be seen in the case of *R v Holton* [2010] EWCA Crim 934, where a casual worker was killed at work. In this case a contractor received custodial sentences of three years and one year respectively. This was as the result of the death of a 15-year-old casual employee. The 15-year-old was crushed to death by a collapsing wall on a site at which he had been working for the defendant Holton. The deceased and his older brother had been demolishing the wall under Holton's direction. Prior to the incident there had been no discussion about how the wall was to be taken down and no immediate supervision was provided. Holton was prosecuted for gross negligence manslaughter. He had a groundwork and landscaping business which employed both full-time staff and casual labour. He had been subcontracted to work on a landscaping project. During the process of demolishing a wall it collapsed and one of the boys died. Holton pleaded guilty to manslaughter. He had left two inexperienced young men to work on a wall which was already known to be dangerous, because a large crack had been noted running down its centre. The deceased's older brother had consulted Holton part way through the work because the wall had begun to lean but he took no action and carried out no inspection.

CHAPTER THREE CHANGE - STANDARD WORK TO NON STANDARD WORK

It was against the law for someone so young to be working on a construction site, there had been no risk assessment carried out and there was inadequate personal protective equipment and virtually no training. The safety of young employees at work is an important issue which was recently discussed in a Conference in Budapest in June 2011 where the European Association for Injury Prevention and Safety Promotion stated that half a million young workers were injured in the EU in 2007. The latest statistics available from Eurostat indicate that although the occurrence of accidents decreased between 1999 and 2007 for workers aged 25 to 64, the occurrence of accidents increased in young workers aged 15 to 24 (Third European Conference on Injury Prevention and Safety Promotion 2011, p.1).

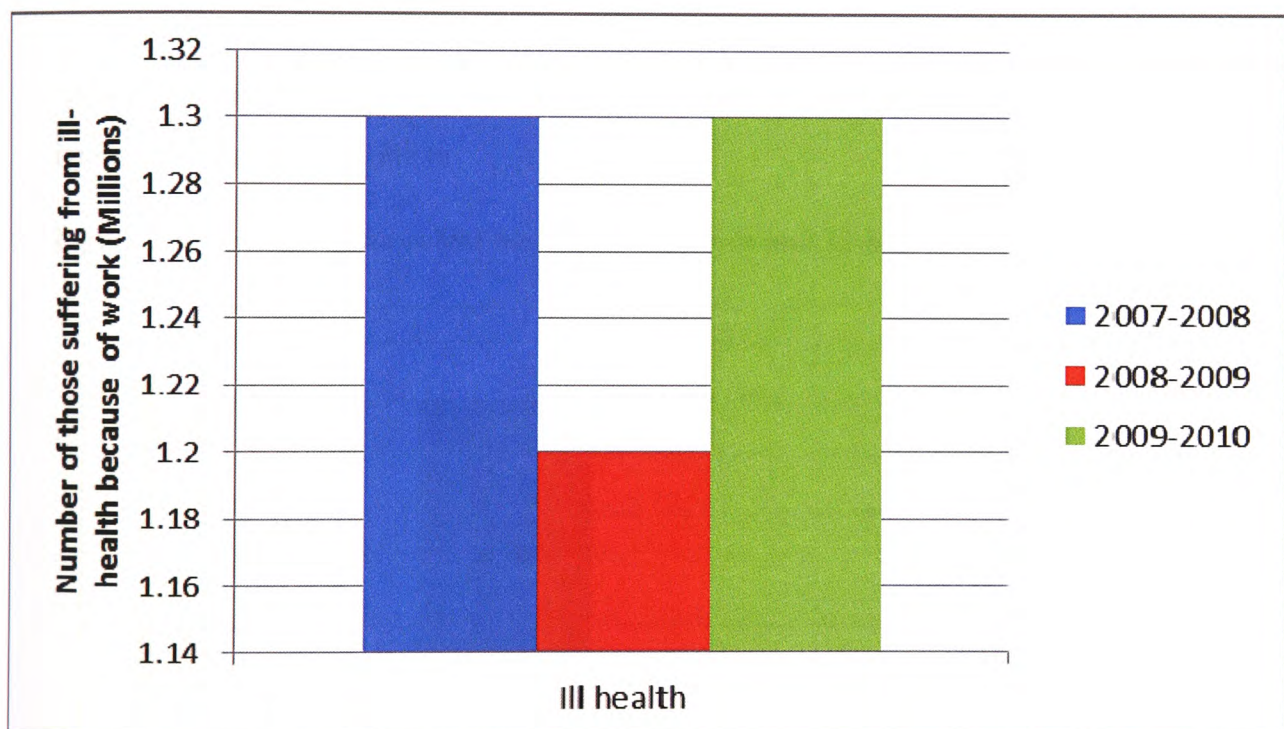
“Young workers are more vulnerable in the work place because of their inexperience and physical and psychological immaturity. They are susceptible to peer pressure and often have an unrealistic perception of risk. They are keen to please and therefore are less likely to question work procedures” (Joyce 2011, p.1).

Furthermore, research also shows that the health and safety risks are increased for NSWs for other reasons, for example, the self-employed are often badly affected through their exclusion from or only limited access to occupational health schemes, health screening at the workplace and policies for fitness support (Leighton et al. 2007). The argument may also apply to sub-contractors as they often suffer from poor supervision by host families, a lack of time and resources available for safety training and the disorganisation in terms of their work practice and management structures. Also workers in fixed-term contracts who lack long-time commitments with their employer may face higher levels of exposure to some factors that cause injury and illness. In other words, in fixed-term contracts, the employers tend not to invest resources into the protection of fixed-term workers, while workers lack the bargaining power and job specific knowledge to defend them (Robinson and Smallman, 2006, p.91). The increase in homeworking would imply an increase in the associated health and safety issues. A range of work-related hazards is perceived by home workers as causing accidents and ill-health. These include: poor seating; repetitive work; manual handling; cutting tools; and working with substances such as solder, glues and paints. It has to be said that a considerable amount of literature that has been found on NSW confirms the vulnerability of those involved in such types of employment.

CHAPTER THREE CHANGE - STANDARD WORK TO NON STANDARD WORK

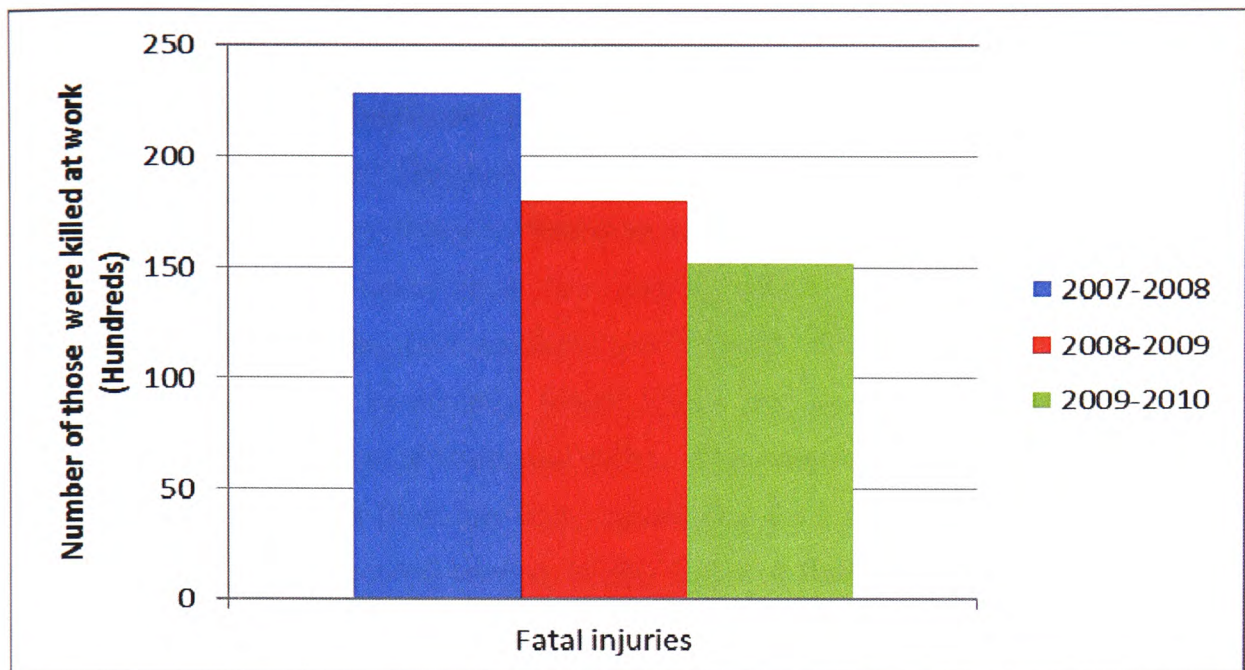
There is no doubt, as the main sources of general statistics in the UK show, that a significant improvement has been made in terms of accidents and work-related health problems. On the other hand, the number of people suffering from ill-health is still on the rise according to the HSE latest figures (Health and Safety at Work Magazine, December 2010) 1.3 million people who worked during the last year were suffering from an illness (long standing as well as new cases) they believed was caused or made worse by their current or past work, 555,000 of these were new cases (HSE 2009-2010). 233,000 reportable injuries occurred, according to the Labour Force Survey a rate of 473 per 100,000 employees. The most commonly reported types of illness remain musculoskeletal disorders and stress, followed by infectious diseases and breathing or lung problems.

Figure 3.6 Number of those suffering from ill-health because of work



This shows that despite a sharp decrease (2008-09) illness remains a problem

Figure 3.7 Number of those who were killed at work



This demonstrates improvement in incidence of fatal injuries; however other, non-fatal injuries still present a problem

Figure 3.8 Number of days lost because of injuries and ill-health



This shows the improvement in occupational health and safety efficacy as the number of days lost has steadily decreased since 2007-2008

However, only limited data including statistics and figures can be found concerning accidents and ill-health to NSWs. Figures and statistics on the rate of accidents and ill-health produced in the UK are mainly applied to employees or self-employed and workers. Workers, which by definition includes employees and self-employed, seem to have the highest incidence of fatal injuries and ill-health. The question here is how many sick and injured NSWs are concealed as hidden statistics within the definition of ‘workers’. As has been discussed in this Chapter, many NSWs are found under this category which raises the question about the proportion of NSWs suffering such accidents and ill-health. Health and safety is a problem that cannot be neglected, particularly where NSWs are involved, who raise a serious challenge to the management of health and safety. The main implications of labour market flexibility are the increased insecurity and vulnerability for a significant proportion of the workforce. There are two general features of this aspect of flexibility: the move away from permanent, full-time employment; and the development of working relationships which avoid employer-employee responsibilities altogether. However the long-term impact of NSW is that related to health and safety, which will be explored further in Chapter 6.

3.5 The Controversy of NSWs

The concept of vulnerability is a broad one, not confined to physical risk as it encompasses other aspects at work which lead in some way or another to the suffering of workers. This can be clearly seen, taking into consideration the nature of NSWs, where they are more likely to be associated with jobs that are contingent in the sense of being of limited duration, such as is the case with fixed-term contract or being off-site, as in the case of home workers and teleworkers. This might make those workers miss out on day to day training on the employers’ premises and the fact that they are less supervised might also present a hazard as was previously explained the case law of *R v Holton* [2010] EWCA Cirm 934. Thus these and other forms of NSW lack the main characteristics of employment relationship that are recognized by the regulatory model in the UK. Burchell, Deakin and Honey (1999, p.1) argued that “There is a perception that the existing classifications have become too rigid to deal effectively with the growth of non-Standard forms of Employment, that is to say, these forms of work which depart from the model of the ‘permanent’ or indeterminate employment relationship constructed around a full-time, continuous working week”.

CHAPTER THREE CHANGE - STANDARD WORK TO NON STANDARD WORK

The case of NSWs raises an important question about the law's efficiency and what might be needed in terms of practical and policy solutions to improve their situation. The confusion over deciding a NSWs legal status stems from the difficulty in determining that person's employment status in the first place. This is demonstrated by the fluidity of interpretation, by courts, of who is an employee and who is not. This was recently emphasized by Leighton and Wynn (2011, P.22) "The recent history of judicial decision making in the area of employment status has been confusing and often unimpressive". This same concern was previously argued by the DTI 2006, P.8)

"Many legal experts felt that it would be helpful to have greater legal certainty and clarity about employment status and thought that the present legal definition of "employees" and "workers" and the associated common law tests were sometimes interpreted unpredictably by tribunals and higher courts."

Attempts to lessen what seems to be the penalty of being employed in NSW have been made over the years. For example, this has been sought by achieving wider application of some employment statutes by the use of either the terms 'worker' which appeared in legislation in the UK from the 1980s, or a wider definition of 'employment' and 'employee'. The term 'worker' is defined in section 230 (3) of the Employment Rights Act 1996 (hereafter ERA) as:

"An individual who has entered into or works under (or, where the employment has ceased, worked under)- (a) a contract of employment, or (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual."

As can be seen from the wording of s 230 (3), the definition is not restricted to those who are employees and expressly work under a contract of employment but it includes a wide range of persons who provide personal services under any other contract, provided that the other party to that contract is not a client or customer such as self-employed and temporary agency workers. This refers to the importance of the employment contract and particularly to the concept of implied term. Therefore, some categories of NSWs such as casual, freelance and self-employed can be workers, then they are entitled to some general employment rights that apply to all workers.

CHAPTER THREE CHANGE - STANDARD WORK TO NON STANDARD WORK

Such rights include entitlement to the benefits of the National Minimum Wage Act 1998 And the Working Time Regulations 1998. However, there is still a limitation in the scope of such regulations which consequently exclude many categories of NSWs who can find themselves excluded from legal protection because of the contract under which they work.

Primarily included here are the self-employed workers who are genuinely carrying out business activities on their own as entrepreneurs, and the ‘bogus’ self-employed who are seen by some as “... a factor in the low level of training, job security, the likelihood of reporting serious accidents or unsafe practices...” Donaghy (2009, p. 36). Other groups such as casual workers, agency workers, home workers are vulnerable because they do not fit in the regulatory approach of the UK. For example, agency workers are classified as workers and this serves to exclude them from entitlement to important employment rights such as unfair dismissal and redundancy protection, which are only available to employees. The employment status can be determined by a complex mix of statutes, contracts and various common law tests which sometimes fall short of providing what is needed to clarify the real employment relationship of many of those working in NSW, as they can be interpreted unpredictably by tribunals and courts. It seems as though there is no clear intention in the law, as it stands, to include some forms of NSW. Thus, a call has been raised by different bodies and organisations to review the rules of employment status in the UK in order to tackle the disadvantages experienced by some NSWs due to their lack of status as employees. The DTI (2006, p. 7) in its review of the employment status criticized the present legal rules on defining employment relationships and the distinction between those at work and the associated common-law tests such as control and mutual of obligation:

“The present definition “incentives” employers to set up employment relationships deliberately to preclude workers from qualifying for the legal status of employee or to deny responsibility...many atypical workers are employed under less favourable pay and other terms and conditions than similar employees and are less likely to be offered training or to be integrated into organizations.”

Confusion over the employment status of non-standard workers operates so as to deny these workers important employment rights. At this point it would help to bear in mind that the vulnerability of some NSWs is multi-dimensional. This can be seen in a number of cases where various forms of non-standard workers have been challenged in different ways.

CHAPTER THREE CHANGE - STANDARD WORK TO NON STANDARD WORK

For example, agency workers face problems due to their vulnerable position in the labour market (TUC, Equality and Employment Rights Department, February 2007). This, to a large extent, is the result of their triangular relationship with the agency and the client. This has been questioned in order to decide whether they are in a contractual relationship with either side. However, that decision has been taken on a case by case basis which explains the different outcome of each case. The issue of triangular employment relationship was raised in the case of *Dragonfly Consulting Ltd v Revenue and Customs Commissioners* [2008] S.T.I. 143: whether a relationship was an employment one or not required an evaluation of all of the circumstances. Mr Bessell provided IT Consultancy Services to the AA through his own service company; Dragonfly Consultancy Ltd. Appeals had been dismissed by the Special Commissioner against determinations / decisions made by HMRC for the Tax Years 2000/01, 2001/02 and 2002/03. The determinations / decisions had been made under the IR 35 legislation, on the basis that had there been a direct hypothetical contract between Mr Bessell and the AA that contract would have been one of service. Dragonfly's arrangements with the AA were provided through an agency, DPP International Ltd. The question was that whether the Social Security Contributions (Intermediaries) Regulations 2000 and Schedule 12 FA 2000 applied to the engagements in which Mr Bessell. The appellant contended that the clause in the upper level agreement which showed that staff provided by the agency 'shall be under the full control and supervision of [the AA] on a day to day basis only regarding performance of duties' was an indication that there was insufficient control for a hypothetical contract to be one of service.

In some cases, therefore, factual circumstances and criteria such as control and mutual obligations will suggest that a worker is an employee, whilst other criteria will indicate that same worker is not an employee or should be treated as self-employed. Furthermore, the employment status of temporary agency workers and their rights, depending on whether or not they are an employee is increasingly litigated before the Employment Tribunal and the Court of Appeal. The Court of Appeal has ruled in *Muschett v HM Prison Service* [2010] IRLR 450, that a temporary agency worker was unable to bring a claim for discrimination and unfair dismissal against either the end user client for whom he performed work or the agency that supplied him. The claimant had a contract with Brook Street Bureau and was sent to work as a cleaner at a prison until his assignment was terminated.

CHAPTER THREE CHANGE - STANDARD WORK TO NON STANDARD WORK

Both the EAT judge held that he was neither an employee of HMPS under a contract of employment nor a worker under a contract for services. Giving the judgment dismissing the appeal, Lord Justice Rimer applied *James v London Borough of Greenwich* [2008] I.R.L.R. 165, in the more recent case of *Muschett v HM Prison Service* [2010] IRLR 450 and held that: "The employment judge's finding that Mr Muschett's status remained at all times that of an agency worker and that it at no point metamorphosed into that of an employee of HMPS under a contract of employment, is unimpeachable." Similarly, he was "under no contractual obligation to HMPS to do any work for HMPS", thus negating his claim that there was a contract for services. Why was he not a "contract worker", able to bring a discrimination claim against HMPS on that basis? The judge held that he was not employed by Brook Street, and therefore the contract worker provisions, such as those in Section 7 of the Race Relations Act (Amendment) 2000, were not relevant. Leave to appeal against this was not granted either by the EAT or the Court of Appeal. This seems unfortunate. Section 7, which makes it unlawful for a principal to discriminate against a contract worker, applies: "To any work for a person ('the principal') which is available for doing by individuals ('contract workers') who are employed not by the principal himself but by another person, who supplies them under a contract made with the principal". In this case, the employment judge found that it was a requirement that the claimant had to carry out his work personally with the Prison Service. Therefore, there must have been a personal obligation as regards his contract with the employment agency: if he decided not to work on a particular day, he could not tell the agency that he was sending along a substitute.

The aforementioned cases show how an individual's legal status is not always easy to determine. The distinction between workers who are employees and those who are not is crucial for the determination of statutory rights, principally the right not to be unfairly dismissed. The legal problem confronting the tribunals and courts is to identify and apply to the facts of each case clearly, comprehensively and correctly the criteria for determining who is an employee and who is not. This is the only way to achieve the consistency necessary for the fair administration of the law. As has been seen, there is a clear issue regarding the employment status for NSWs who do not satisfy, in most cases, the specific requirements of the protection legislation. This is true considering particular factors: these factors include who sets the rates of the pay, whether the individual or the employer provides the equipment, how tax payments are made and whether the individual is in receipt of holiday and sick pay.

In this context, many questions have been raised about the situation of most of NSWs, such as self-employed, agency and outsourcing, who move from contract to contract and who are facing the constant risk of missing out on training. It has been argued, however, that the latter issues are only found in numerical flexibility by contrast to functional flexibility (Fredman, 2004). These terms explain the links between the so-called primary and secondary labour markets that focus on the core and peripheral workforce as Atkinson's model has already shown. The vulnerable position of non-standard workers is seen by the TUC (2007, p.4) in its report as a hidden cost of labour market flexibility. An example of human cost would be unskilled workers on building site are more vulnerable to accidents because they lack training. An example of financial cost for business would be the employment of agency nurses in under-staffed hospitals where agency fees have to be paid in order to acquire temporary staff to bridge the gaps. The implications of non-standard employment for those involved are seen as being of a similar nature across all the various types.

3.6 Conclusion

This Chapter draws attention to the on-going changes in the UK labour market over the past decades. This is crucially important in terms of considering all the implications that such changes have brought into the employment relationship. As part of the response to these changes an increased adoption of non-standard employment has taken place. The workforce is becoming and will continue to become increasingly diverse. Thus, it was relevant to consider the various work patterns of non-standard employment which evoke significant concerns in terms of their incidence, benefits and most importantly their challenges for health and safety. As has been discussed in this Chapter, according to a number of studies and in contrast with standard work, the majority of NSW represent a challenge in the field of health and safety. They are seen to be more vulnerable and exposed to poor working conditions and ill-health such problems are due in most cases to the nature of NSW and the lack of statutory requirements within the regulatory approach in the UK. Hence the employment status of NSWs may prevent, in some cases, those who are employed under different patterns of non-standard work from effectively enjoying sufficient protection. However, the salient question is that relating to the challenges of NSW to health and safety. Undoubtedly, the question of health and safety is to a large extent dependent upon where work is performed and when. Therefore, in this context, certain forms of NSW are seen to represent their own challenges -

CHAPTER THREE CHANGE - STANDARD WORK TO NON STANDARD WORK

for example, agency workers being less familiar with the workplace, frequent change of workplace, dual employer situation, lack of social security and lack of steady income. These conditions clearly impacts on training, supervision, access to emergency and occupational health and safety issues. Similar arguments can be raised for other forms of NSW such as home workers. In spite of all the important findings, more studies, including, qualitative and quantitative research, are required in order to explore and evaluate the consequences of non-standard work arrangements for health, safety and well-being and the law's response. The core aim of the empirical element of this research will be to attempt such an evaluation (Chapter 6).

CHAPTER FOUR

The Current Legislative Framework to Safeguard Health and Safety in Today's Workplace

4.1 Introduction

The transformation of statutory provisions for health and safety at work brought about by the Robens' Report and the HSWA 1974, as previously considered in Chapters 2 and 3, marked an important period of change in the history of the UK health and safety law (Great Britain. HSE, Thirty years on and looking forward: The development and future of the health and safety in Great Britain, 2004). This involved change and development in the notion of liability at work, the key role of trade unions and a coherent approach to all types of workplaces. One of the major developments over the last three decades has been the significance given to occupational health. As early as the 1980s, the emphasis was on the exposure of workers to hazardous substances. However, in the 1990s broader threats to workplace health were considered and growing demands for new strategic approaches to control health risks, such as workplace stress, were increasingly obvious. It was the parcel of Regulations that were operative in 1992 in order to implement the European Directives that advanced the matter of health and safety far more than the 1974 Act. These regulations are of great significance because they represent a major shift from the past targeted and detailed approach based on corrective principles, to objective-driven law based on a preventative approach to tackle occupational health and safety risks. This was clearly set in the Framework Council Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work which was the base for many health and safety legislation since 1992.

“Whereas the incidence of accidents at work and occupational diseases is still too high; whereas preventive measures must be introduced or improved without delay in order to safeguard the safety and health of workers and ensure a higher degree of protection.”

This Chapter will only consider the legislative framework whereas Chapter 5 will concentrate on the common law as a major pillar of health and safety law in the UK (see Research Question 3, p. 3 above). It is intended in this Chapter to examine the elements of the legislative developments in the UK in recent years in the area of health and safety at work. This is to evaluate the way in which the current UK regulatory framework has been effective or otherwise in dealing with the various challenges that have arisen in the rapidly changing world of work, particularly in the case of NSW.

4.2 A New Philosophy and a New Approach to Health and Safety at Work

The picture was different prior to the HSWA 1974 because a large proportion of workers were falling outside the protection offered by the Factory Acts, targeted at particular industries and activities (Great Britain. Health and Safety Commission (hereafter HSC), A further eight million workers were covered, 2004). The philosophy of the HSWA 1974, as discussed in Chapter 3, was based on a number of principles. These consist of a comprehensive coverage of workplaces and processes, duties of employers, employees and the self-employed; a more self-regulating system in its enforcement regime, of the unification of the inspectorates and the modernisation of their administrative powers. This approach was further advocated via the widespread deregulation in the UK in the 1980s and 1990s. The deregulation strategy aims at adopting policies that prioritize finding a balance between the cost of compliance and risks that would exist in the absence of regulating health and safety risks. Thus, the aims which health and safety legislation in the UK attempts to achieve are largely influenced by broader concepts of flexibility and functionality. This is, in particular, the case regarding the standard of protection provided by the different regulations 'so far as reasonably practicable'. The intention is to ensure an effective level of protection without imposing unmanageable burdens upon businesses. It introduced flexibility into the law and contrasts with the EU legal system where the law is written in strict terms. This will be further discussed later in this Chapter. Health and safety legislation intends to deal with the various changes that took place in the nature and structure of the labour market and in the economy as a whole. These changes have an important implication for the efficacy of legislation.

4.2.1. The Legislative Framework

The regulatory framework for health and safety in the UK is based on HSWA 1974 (Great Britain. HSE Health and safety regulation: a short guide, August 2003). In addition, there are a number of key regulations, referred to here as the ‘Six-Pack’ of 1992 (see Chapter 1, p. 5) which operate alongside areas of civil law such as negligence and occupier’s liability. Being a member of the EU since 1973 brought the UK under the obligation of implementing EU health and safety law. The directives emanating from the EU represent a major advance in the area of occupational health and safety at work and constituted a vital reform in the UK health and safety law (Smith, 2000). Following the introduction of the HSWA of 1974 questions were raised by many including Barrett and James (1988, p.26) in order to examine its effects on occupational health and safety, and whether it will remain effective in the future.

“The passage of time is a severe test of regulatory legislation. If such legislation is to survive and remain effective it must have objectives representing values that continue to receive wide-spread support. It must also incorporate the machinery for achieving its objectives-this normally means it must contain duties which remain relevant and enforceable”

This in practice meant how well it resulted in preventing accidents and ill-health for those who are most affected. In order to do this, particular attention was paid to the structure and operation of not only the 1974 HSWA but also of the legislation that was enacted under its provision. Questions particularly arose regarding the duties imposed under section 2(1) and 2(2) of the HSWA 1974 and the employer’s duties under other key health and safety legislation. One of the main criticisms of the HSWA 1974 was that the employer’s duties are very general, which made them lacking in specificity, and they appeared to be obscure and open to misinterpretation. As explained in the latter part of Chapter 2, these duties mainly apply to employee, which raises another question about other types of workers who lack this employment status and do not have an employment contract. Those workers include many NSWs such as casual and temporary agency workers, as discussed in Chapter 2. Moreover, these duties are qualified and subject to reasonable practicability which clearly can be seen from the wording of section 2(1) and 2(2): “It shall be the duty of every employer to ensure, so far as reasonably practicable, the health, safety and welfare at work of all his employees”.

CHAPTER FOUR CURRENT LEGISLATIVE FRAME WORK TO HEALTH & SAFETY

This according to some (James, 1992, p.86) gives the cost-benefit of the employers a priority over their legal duties imposed upon them under section 2(1) and 2(2). Section 2(3) of the HSWA 1974 has followed the same general structure in requiring the employer to prepare a safety policy without giving any specific direction or guidance as to its content.

“Except in such cases as may be prescribed, it shall be the duty of every employer to prepare and as often as may be appropriate give a written statement of his general policy with respect to the health and safety at work to his employee.”

As a result, the sufficiency and adequacy of the safety policy was limited and its practical impact to provide employees with information on the possible hazards and risks at the place of work was also hindered. Subsequently employers will be free to prepare safety policies and specify the level of management responsibility in this respect. In other words, the generality of employer's duties imposed under sections 2(1) and 2(2) raises a particular concern about how well this will serve the overall priority of the HSWA 1974: to consider health and safety as an on-going process which should be taken into account in the employers' long term policy, and decision-making. Furthermore, the workers' involvement was fundamental to reducing risk and preventing people from being injured or made ill at work. Thus, as considered in Chapter 2 the Robens Report emphasised the importance of the participation of employers, workers, trade unions and other concerned parties in improving health and safety. In this context, the HSWA 1974 went even further than the Robens Report on employee's involvement; the latter had preferred only a vague obligation to consult workers on health and safety issues (Lewis, 1975). The provision made under section 2(4)-(7) regarding the employer's duty to consult employees' safety representatives over safety matters is a considerable advance in making health and safety a management responsibility. In so doing, the HSWA 1974 enabled regulations to be passed to give recognition to trade union appointed section 2(4) safety representatives. Such recognition only applied to workplaces where employers recognized trade unions for the purpose of negotiations on matters relating to persons employed by them, thus the HSWA 1974 was criticized for having a narrow approach in imposing this duty on the employers (Barrett and Howells, 1997). This particularly applies to NSWs where many of them do not belong to trade unions.

CHAPTER FOUR CURRENT LEGISLATIVE FRAME WORK TO HEALTH &SAFETY

“...it is often the permanent staff who are in the union, while the vulnerable, sometimes temporary workforce who are ignored.” (Great Britain. TUC, 2008, p.2)

The regulations that were created under the scope of HSWA 1974 fell short of the European requirements for workers' involvement in occupational health and safety. The Framework Directive 89/391/ required in Article (1) each Member State to introduce measures to encourage informing, consultation, balanced participation in accordance with national laws and/or practices with workers and their representatives. A decision of the Court of Justice of the European Communities (hereafter CJEC) has ruled that the UK statutory provision for consultation with recognised trade unions falls short of the EU requirements for worker participation (*Commission v. UK, Collective Redundancies* 1994) Legislation was passed to increase the participation of a safety representative and a safety committee in health and safety at work. The introduction of such regulations as well as other health and safety legislation in the early 1970s mirrored a strength and growth in the power and the membership of the trade unions (Beck and Woolfeson, 2000). Another aspect of this phenomenon was the strengthening of a major part of the self-regulatory mechanisms which were based on the development of occupational health and safety strategies and the involvement of employees in occupational health and safety policies. The Safety Representatives and Safety Committees Regulations 1977 and associated codes of practice empowered recognised trade unions to appoint safety representatives.

It also provides a legal framework for employers as well as the recognized trade unions to reach agreement on arrangements for safety representatives and safety committees to operate in their workplace. Although the Safety Representatives and Safety Committees Regulations of 1977 reflected a growing awareness of workers' involvement in the UK health and safety system, their provisions were seen as limited since they had only given the recognized trade unions the power to appoint safety representatives (Barrett and James, 1988). Thus, many workplaces would be excluded, where NSWs were employed and who were not typically members of trade unions. The limited provision for workers' participation under the regulations of 1977 fell short of the requirements of the Framework Directive 89/391/EEC which stipulated that all workers were to be involved including NSWs.

It was considered that except in smaller establishments a suitable approach might be the setting up of a Safety Committee consisting of members drawn from both management and employees who could then consider its objectives. Such measures should help employers to comply with their legal duties (particularly under section 2 of the HSWA 1974 and the Health and Safety (Consultation with employees) Regulations 1996. Under Section 3 of the latter Regulations, any employee who is in a group that is not covered by trade union representatives is to be consulted by their employers on matters relating to their health and safety at work. The latter Regulations regarding the expansion of workers' involvement in occupational health and safety is of a great importance since a considerable number of workers who are nowadays employed in non-standard work arrangements and who do not have direct employment relationships with the employer can be covered and are not trade unions members, for example, the self-employed and freelance workers.

4.3 The Interrelationship between the European Union and the UK

Since the research is concerned with health and safety law of the UK it was crucial to study the European Law relating to the area of health and safety, as much of the UK health and safety legislation has originated in Europe in recent years. Despite their provenance, areas of difference remain, in regard to the origins and underlying philosophies and concepts of the two legal systems. The UK joined the European Community (now called the European Union) on the 1 January 1973, since then the European law has made a vital impact on the UK legal system. The legislative power at the European level is given to the Council of Ministers and the European Commission under Article 249 (ex189) of the Treaty of Rome. Their power includes passing regulations, directives, making decisions, issuing recommendations and offering opinions. The Council of Ministers makes the law whereas the European Commission initiates it. In recognition of the binding nature of each form of the EU law it must be borne in mind that these forms can be divided into primary sources which include Treaties and secondary sources such as Directives, Decisions and Recommendations. Member States with their different constitutional rules and traditions have accepted the principle of the supremacy of EU law (Watson, 2009). The supremacy of EU law was established by the Treaties and not by the national constitutions. Moreover, the principle of the supremacy of EU law has been built via a series of rulings that have been reached by CJEC.

UK

1802 The Factory Health and Morals Act of 1802

1819 Cotton Mills and Factories Act 1819

1833 The Factory Act 1833

1844 The Factories Act 1844

1872 The Factory Act 1872

1888 The Factory Act 1888

1888 The Factory Act 1888

1969 The Employers' Liability (Compulsory Insurance) 1969

Standard: "Reasonable practicability"

1973 The UK became a member of the European Community

1974 The Health, Safety and Welfare at Work Act 1974

the 'Six - P a c k e'

1. Health and Safety (Display Screen Equipment) Regulations 1992
2. Management of Health and Safety at Work Regulations 1992
3. Manual Handling Operations Regulations 1992
4. The Personal Protective Equipment Regulations 1992
5. The Provision and Use of Work Equipment Regulation (PUWER) 1992
6. Workplace (Health, Safety and Welfare) Regulations 1992

UK Standard: Reasonable practicality

2007

Figure 4.1 the key health and safety legislation in the UK and EU:
Two different approaches

EU

1973 Enlargement of the European Union

1975 Directive 75/324/EEC- aerosol dispensers

1976 Directive 76/767/EEC- pressure vessels

1980 The Chemical, Physical and Biological Agents at Work Directive 80/1107

1982 Lead and Ionic Compounds Directive 82/605

1983 The Asbestos Directive 83/477

1986 The Noise at Work Directive 86/188

The Framework Directive

89/391/EEC

1. Directive 89/654/EEC-workplace requirements
2. Directive 89/655/EEC- use of work equipment
3. Directive 89/656/EEC-use of personal protective equipment
4. Directive 1989/686/EEC- personal protective equipment

European Court of Justice (ECJ)

EU Standard: Strict liability

(Judgment of the European Court of Justice in Case c-127/05) the European Commission brought a case against the UK accusing the UK of failing to fulfill its obligations under the Framework Directive of 1989- The ECJ's Judgment supported the UK standard of reasonable practicability. Thus, there will not be any practical changes in the UK's policies and practices at the workplaces and the UK 'reasonableness' thinking for occupational health and safety will be retained.

The CJEC acknowledged that EU law would be meaningless if each Member State could individually disregard it and give priority to their national law. This was well-established in the jurisprudence of the CJEC in a considerable number of cases. As to the UK section 2(4) of the European Community Act 1972 deals with the relationship between EU law and national law without explicitly providing for the supremacy of EU law. Despite this, it was questionable whether S 2(1) and 2(4) gave priority to EU law or was only a rule of construction (*Garland v. British Rail Engineering Ltd* [1983] 2 AC 751). The UK courts are generally inclined to the teleological approach .i.e. they have to reflect the policy objectives as well as the letter of the law. Therefore, this approach was adopted by the House of Lords in a number of cases, for example, in *Garland v. British Rail Engineering Ltd* [1983] 2 AC 751 a case that involved a conflict between the Equal Pay Act 1970 and Article 119 of the Treaty of Rome, over the exemption of death and retirement from equal provision under s.6 (4) of the Act. The Supreme Court (previously the House of Lords) held that s. 6(4) must be constructed so as to conform to Article 119. Moreover, in *Factortame* (Case C- 213/89) it was accepted by the House of Lords that directly effective EU law must prevail over any inconsistent subsequent national regulations. This attitude of the Supreme Court, in this case opposed the earlier decisions of the UK courts which showed uncertainty about the status of EU law.

4.4 The Increasing Importance of Health and Safety at the EU Level

The area of health and safety at work has been an area of increased activity on the part of the EU and it is estimated that approximately two-thirds of all social policy Directives are in this field (Buffet and Priha, 2009). As well as this, the adoption of the Single European Act 1986 gave a new sense of purpose and direction to the occupational health and safety measures taken by the community. It represented, for the first time, that health and safety at work had been dealt with as an operational provision in the European Economic Community (hereafter EEC) Treaty, the new Article 118A. This Article allows the Council of Ministers to adopt directives intended to protect worker's health and safety at work by a qualified majority, thus speeding up the adoption process at the Council. The period following the adoption of the Single European Act was particularly productive, introducing primarily the general Framework Directive on health and safety (Council Directive 89/391/EEC) on the introduction of measures to encourage improvements in the safety and health of workers.

CHAPTER FOUR CURRENT LEGISLATIVE FRAME WORK TO HEALTH & SAFETY

This was soon followed by ‘Six Daughter’ Directives, coming into effect on 1 January 1993. They were Workplace (the First) Directive 89/65; Work Equipment (the Second) Directive 89/655; Personal Protective Equipment (the Third) Directive 89/656; Manual Handling of Heavy Loads (the Fourth) Directive 90/269; Display Screen Equipment (the Fifth) Directive 90/270; Carcinogens (the Sixth) Directive 90/394. European legislation is concerned with risk management and encourages a pro-active role for all employers with emphasis on risk assessment, monitoring and prevention aiming to ensure that those at risk, particularly those at greatest risk, as will be explained later, receive the greatest level of protection. In this context the European legislation applies broadly to all types of workplaces, workers and all work related risks which must be assessed and responded to. The standard expected is generally that of strict liability as can be seen from the wording of the various directives. This, in practice, has important consequences in enforcing the provisions and different rules of the EU more effectively.

CHAPTER FOUR CURRENT LEGISLATIVE FRAME WORK TO HEALTH &SAFETY

This will be discussed further, below, considering the major exposure of the UK health and safety law to the influence of EU law on occupational health and safety at work. The Framework Directive (Council Directive 89/391/EEC) with its scope marked an important period in the legal relationship between the EU and the UK. Its application, as well as further directives on specific safety and health issues, is the cornerstone of European safety and health legislation. These directives set out minimum requirements and fundamental principles, such as the principle of prevention and risk assessment, as well as the responsibilities of employers and employees. The scope of the Framework Directive is broad and it applies to both public and private sectors and to any person employed by an employer, including trainees and apprentices but excluding domestic servants (Article (2) and (3)). This is of great importance considering the case of many of those employed in the different forms of non-standard work arrangements as many of them will be covered. The overall aim of the Framework Directive is to ensure a high degree of protection of workers at work, through the implementation of preventive measures to guard against accidents at work and occupational diseases, and through the information, consultation, balanced participation and training of workers and their representatives.

The European legal system represented in the Directives and other EU regulations is written in strict terms, as it seeks to provide a higher level of protection to those at work in regard to health and safety. This can be seen from the wording of Articles 1 to 15 of the Framework Directive 89/391/EEC which lay down the health and safety principles for EU Laws. The main aspect of the preventative measures required by the Framework Directive, from the wording of Article 6 (1) and (2) is to reduce risk to the lowest possible level. Thus a risk assessment requirement has been the mainspring of this Directive as well as a number of subsequent directives within the meaning of Article 16 of the Framework Directive. These directives include the Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth, or are breastfeeding. The Directive implements Article 16 (1) and it also requires employers to carry risk assessment in order to reduce risk to health and safety for those who are covered by its provisions Article (4) and (5).

4.4.1 The EU Directives and Their Relevance to NSW

A directive which is particularly relevant for the purpose of this thesis - as it was concerned with some form of NSW - is the Council Directive 91/383/EEC of 25 June 1991, supplementing the measures to encourage improvement in the safety and health at work of workers with a fixed duration employment relationship or a temporary employment relationship. "This directive aims at ensuring that workers with an employment relationship governed by a fixed-duration contract or on a temporary employment are afforded the same level of protection as that of other workers." (Preamble of the Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship).

According to this directive the definition of temporary worker is wide and it refers to those who work under fixed-term contract or on a temporary employment bases including agency workers. A temporary worker according to the specific provision of this directive must receive prior notice of any activity he is required to take up. He must be informed of any special occupational qualifications or skills or special medical surveillance required, and if there are increased specific risks involved in the activity. The Directive also requires that each worker receives sufficient training appropriate to the particular characteristics of the job, account being taken of his qualifications and experience. The latter Directive confirms the primary aim of the Framework Directive 89/392/EEC to protect all those at work regardless of their employment status or their type of contract. This reflects the prominent position given to the health and safety of all those at work, paying special and deliberate attention to the most vulnerable groups, such as some categories of NSWs - .i.e. fixed-term contractors, part-time and temporary workers. Some work activities and some groups of workers such as those with disabilities, pregnant women, temporary, homeworkers and mobile and young workers have been singled out for special rules. These groups are perhaps the most vulnerable ones which are to be found in today's workplace. In this context, on 27 of May 1998, the European Commission launched a Recommendation calling upon all EU Member States to ratify the ILO Convention No. 177, 1996 concerning home work.

The Convention aimed at improving the situation of homeworkers, promoting equality of treatment between homeworkers and other wage earners and ensuring that health and safety law in each Member State take the issues into account (National Group on Homeworking, ILO Homeworking: Convention: The case for UK ratification of ILO Convention 177 on Homework, 2008). This is of great importance to this thesis, which is concerned to a large degree with the situation of NSWs as has been explained in Chapter 3, as women dominate part-time work in Europe as well as in the UK. Young workers are also on the increase in the modern workplace. Therefore, it is fitting for European law, in the area of health and safety to emphasize the protection of all those at work regardless of their employment status. This reflects the growing awareness of the changes that are taking place in the structure of the labour market and in the nature of the workforce.

Health and safety at work constitutes one of the most concentrated and important social policy sectors at the EU - (Commission of the European Communities, Adapting to change in work and society: a new Community strategy on health and safety at work, 2002). In line with this the EU has recently adopted a new directive; Directive 2008/104/EC on temporary agency work (the “Agency Workers Directive-AWD”). The central purpose of this directive is to ensure the appropriate protection of temporary agency workers through the application of equal treatment to them. This Directive follows similar directives on fixed term and part-time work which shows the continuous efforts by the EU in order to include any form of employment that might be exposed to risks at work because of their employment status. This also demonstrates the extent of the protection that has been devoted to the various patterns of NSW which are increasing in Europe. It indicates the obvious concern about the situation of NSWs which has captured the attention of different European organizations as has been previously explained in Chapter 3.

4.5 The Implementation of EU Law in the UK

Key regulations included the “Six-Pack” of 1992 and the Approved Codes of Practice stressed the vital role of the management of risks as an effective way of providing better standards of health and safety and preventing accidents and ill-health at work. Therefore, it was crucial to evaluate the way in which the legislation has dealt with the different challenges

including the growth of NSW and the increasing number of new hazards which are by no means limited. All of these issues and concerns raise a question about the efficiency of this legislation which occupies an essential part of the modern health and safety law in the UK.

4.5.1 New Areas and Challenges in the Field of Health and Safety

Regulations

The reform of occupational health and safety has made an obvious impact in terms of providing a gradual improvement in health and safety standards and arrangements. Health and safety legislation imposed more specific responsibilities on employers regarding how they should approach the management of particular types of hazards to health and safety at work (James, 1992). This includes a set of Regulations that was introduced during the 1970s and 1980s. The regulations covered a wide range of physical risks to occupational health such as the Control of Lead at Work Regulations 1980; the Control of Industrial Major Accident Hazards Regulations 1984 (as amended) in 1999 and the Control of Substances Hazardous to Health Regulations 1988. However, it should be borne in mind that during the two decades or more after the HSWA 1974, many changes had taken place in the economy, as well as the nature of work and the workforce which had a significant implication for the efficacy and the operation of these regulations (Gunningham and Johnstone, 1999). These changes included a shift in the types of employment from a long dominating manufacturing sector to the expanding service sector.

Furthermore a continued reduction in the membership of trade unions was one of the main features of industrial relations by the end of 1970s. In addition, during the 1980s there was a growing reliance on temporary, part-time and sub-contracted labour which to a large extent was seen as a result of the new demands of the economy. The prevalence of these working patterns reflects, as discussed in Chapter 3, a considerable change in the nature of employment relationships. These and other changes in the economy and the labour market had an undeniable influence on the operation of legislation at the time. This was accompanied by a recession in the UK economy by the end of 1970s which ran until the mid-1980s. This led to a lower priority being given to health and safety considerations by both employers and employees.

As a consequence, a severe cut occurred in the inspectors' numbers and in the resources available for the enforcement authorities (Barrett and Howells 1997). Repercussions included attempts by inspectors to avoid prosecutions and the imposition of higher fines on those employers and organisations which fell short of the required health and safety standards at their place of work.

4.5.2 The "Six-Pack" Regulations

In response to the introduction of the Framework Directive 89/391/EEC and the specific 'Six Daughter' Directives, a package of five regulations supplemented by Approved Codes was enacted into the UK law. These regulations, unlike the pre-existing legislation, gave rise to civil liability which has an enormous effect on supporting the employee's claims for damages for breach of statutory duty. The concept of risk assessment although it already existed by the post-HSWA 1974, for example: the Control of Substances Hazardous to Health Regulations 1988 and by the Asbestos (Prohibitions) Regulations 1985, it was further developed via the scheme of the new regulations. This to a large extent reflects the impact of the Framework Directive 89/391/EEC which placed great emphasis on prevention of occupational risks, the protection of safety and health, the elimination of risk and accident factors, at work (Articles (6) and (7)). The MHSWR 1992 accompanied by an Approved Code of Practice reflected the specific requirements and obligations that the Framework Directive sought to impose upon the employers. This can be seen considering the scope of the regulations. Among the fundamental provisions of the MHSWR 1992 is Regulation 3 which requires employers and self-employed to carry out risk assessments. A risk assessment is an important step in protecting workers as well as complying with the law. It assists each employer to focus on the risks at their workplace which have the potential to cause harm to their workers. It is not expected to eliminate all risk, but employers are required to protect their workers as far as is 'reasonably practicable'. Thus risk assessment is a careful examination of what could cause harm to people, so that each employer can weigh up whether they have taken sufficient precautions or they should do more to prevent harm. Risk assessment must be suitable and sufficient and must consider the risk to the health and safety to all employees and other persons, arising out of the conduct of the business or undertakings by the employer or self-employed person. By way of illustration, consider The Provision and Use of Work Equipment Regulations 1998 in which the duty is strict:

“Suitability of work equipment

4.—(1) Every employer shall ensure that work equipment is so constructed or adapted as to be suitable for the purpose for which it is used or provided.

(2) In selecting work equipment, every employer shall have regard to the working conditions and to the risks to the health and safety of persons which exist in the premises or undertaking in which that work equipment is to be used and any additional risk posed by the use of that work equipment”.

“Risk assessment

3.—(1) every employer shall make a suitable and sufficient assessment of—

(a) the risks to the health and safety of his employees to which they are exposed whilst they are at work; and

(b) the risks to the health and safety of persons not in his employment arising out of or in connection with the conduct by him of his undertaking,”

This is to identify the measures which need to be taken in order to comply with the requirements and prohibitions imposed upon the employer by the relevant statutory provisions. The most straightforward method of risk assessment includes five steps (Great Britain. HSE, five steps to risk assessment, 2012):

1. Identifying the hazards
2. Deciding who might be harmed and how
3. Evaluating the risks and deciding on necessary precautions
4. Recording the findings and implementing them
5. Reviewing the assessment and updating it if necessary

By the relevant statutory provisions is meant the general duties under the HSWA 1974 and any more specific provision in the pre-existing legislation. An employer who employs five or

CHAPTER FOUR CURRENT LEGISLATIVE FRAME WORK TO HEALTH & SAFETY

more employees must record the findings of a risk assessment. Regulation 4 obliges employers to put into effect arrangements for the effective planning, organisation, control, monitoring and review of the measures which they need to take as a result of the findings of the risk assessment. This obligation upon employers is crucial in managing any risk at work which in the long term results in the reduction of the rate of accidents and ill-health of those who are exposed to these risks. Furthermore, the MHSWR 1992 only obliges employers with five or more employees to record in writing the findings of risk assessment and the arrangements made as a result (Regulations 3(4) and 4 (2) whereas there is no such exception in the Directive. However, the MHSWR 1992 were amended by the Management of Health and Safety at work Regulations 1999 which added new provisions that were not covered by the MHSWR 1992. The new provisions widened the scope of the risk assessment process so as to include women of child-bearing age who may become pregnant and mothers of young children who might be exposed to risk while at work. This is important because many women are entering today's workplace and representing a large proportion of one of the main forms of NSW, which is part-time work. The MHSWR 1992 go beyond the provision under HSWA 1974 for employer's duties. This represents a response to the main requirements of the EU health and safety law, particularly, the Framework directive of 1989.

According to the provision of section 2 of the HSWA 1974, employers have a duty to ensure, so far as is reasonably practicable, that plant and system of work is safe and without risk to health, and make arrangements for ensuring safety and absence of risk to health in connection with the use, handling, and transport of articles and substances. As can be seen from the wording of section 2, there is no explicit mention under section 2 of HSWA 1974 of arrangements for risk management, as were required under Regulation 4 of MHSW 1992. However, some argue that the thrust of the concept provided in HSWA 1974, 'So far as is reasonably practicable' is based on the notions of risk and risk assessment (Howes, 2009). This might have been implicit but not explicit and therefore perhaps open to misinterpretation. Furthermore, in accordance with Regulation 5 every employer is under an obligation to provide his employees with appropriate health surveillance. This is the essential distinction between UK and EU law. The latter is lucidly and rigidly prescribed and therefore less vulnerable to misinterpretation and distortion. For instance, EU law is based on risk management; it is proactive and ensures that the most vulnerable workers receive the greatest protection.

CHAPTER FOUR CURRENT LEGISLATIVE FRAME WORK TO HEALTH & SAFETY

By contrast, UK law is based on reasonable practicability and reasonable foresight. This is vague and can be used as an excuse for not providing adequate protection. For example, the phrase “reasonably practicable” may afford the opportunity for an employer to avoid making changes or providing equipment which he/she would regard unreasonably expensive, or to do alteration work which might be unreasonably disruptive. Under Regulation 7 of the Management of Health and Safety at Work Regulations of 1999 every employer is required to appoint one or more ‘competent persons’ to assist him in taking the measures that he needs to take in order to comply with their obligations. It has been argued that this provision imposes more pressure, than before on employers to appoint safety advisers and occupational health personnel with recognized specialist qualifications. Particular requirements must be considered by the employer in appointing the competent persons. Since it is possible that the competent person is not an employee in the undertaking then he/she must be given information on any special factors which may affect the risk to health and safety in the undertaking, as well as information on any temporary workers who may be working in the same undertaking. This reflects the intention of the regulation to provide adequate protection to NSWs who can be temporarily found on the employer’s premises.

In addition, the MHSWR of 1992 has brought more details and specific requirements on controlling risk at work and put greater emphasis on the employer in carrying out the assessment. For example, Regulation 7 obliges the employers to establish appropriate procedures which are to be followed in the event of ‘serious and imminent danger to persons at work in his business’. Getting the employees involved in the process of assessment occupies central place in the regulations. Thus every employer under Regulation 10 shall provide his employees with comprehensive and relevant information and every employer now has a statutory duty to inform and tell the employees about any special risks involved in their work. The implementation of the Framework Directive of 1989 which emphasized the importance of consultation and providing comprehensive information to employees is thus reflected. The MHSWR 1999 also dealt with situations where two or more employers share a workplace, as every employer has a duty to co-operate with the other and to co-ordinate the measures he takes with those the other employers are taking (Regulation 11). This is of great importance, considering the case of NSWs who might be employed by other such sub-contractors, or agencies, and who are only there for a short-period, on the premises of the general employer.

CHAPTER FOUR CURRENT LEGISLATIVE FRAME WORK TO HEALTH & SAFETY

In principle, according to Regulation (12) some NSWs e.g. hospital cleaners which are frequently on tender from outside the health service, should be covered. In practice, the sharing of a workplace by two employers has proved to be controversial, particularly, when their employees suffer from accident or ill-health. This was disputed in recent cases where the question of vicarious liability was raised and who would be responsible (*Viasystems (Tyneside) Ltd (claimants) v Thermal Transfer (Northern) Ltd and others* [2005] EWCA Civ 1151). This will be further discussed in Chapter 5 considering the rules of common law for employer's liability. Regulation 11 also requires the employer in control of a site to give health and safety information to the employees of contractors. This confirms the earlier duty required by s.3(1) of HSWA 1974 to conduct his undertaking in such a way as to ensure that persons not in his employment, who may be affected, are not put at risk, and includes the giving of information and instruction to employees of other employers. However, where there is no controlling employer, the employers and self-employed persons who are present should agree upon joint arrangements, for instance, appointing a health and safety coordinator. In complying with the main provision of the regulations in preventing risk at work, the MHSWR 1999 place particular duties on the employer that aim to reduce any chance of exposure to risk the employees may experience at work. Therefore, Regulation 13 requires employers to consider the capabilities of their employees with regard to health and safety before giving them any tasks. In doing this the employer must ensure that the demands of any job do not place the employee at risk. This applies to the employee's abilities, the level of training, knowledge and experience.

The lack of adequate training, knowledge and experience could contribute to accidents and injuries that take place at work, especially with young workers who might be hired by employers through agencies for a particular task on a temporary basis. An example of this was illustrated in Chapter 3 which highlighted the health and safety issues for some forms of NSW such as the case of temporary agency workers where the lack of training and knowledge would affect the health and safety of those who could be temporarily employed by employers or self-employed. The MHSWR of 1992 sought to widen its scope to include everyone at work, Regulation 12 placed new obligations on employees to use any equipment provided to him by his employer in accordance with the instruction and training that had been given to him.

CHAPTER FOUR CURRENT LEGISLATIVE FRAME WORK TO HEALTH & SAFETY

The employee is also under an obligation to report any defects in the health and safety measures taken by his employer. Regulation 13 creates new specific obligations on employers and the self-employed towards temporary workers. It obliges the employer to provide information about any special occupational qualifications or skills needed to do the job safely and also any health surveillance which may also be necessary (Smith, 2000).

“15.—(1) every employer shall provide any person whom he has employed under a fixed-term contract of employment with comprehensible information on—

(a) any special occupational qualifications or skills required to be held by that employee if he is to carry out his work safely; and.

(b) any health surveillance required to be provided to that employee by or under any of the relevant statutory provisions.”

The provision of Regulation 15 demonstrates that special protection is given here to temporary workers who might be employed to carry out particular tasks for a short period on the employer's premises. Another important area relating to health and safety at work is the protection of young persons from any risks to their health and safety. Regulation 19 requires the protection of young workers, demonstrating a crucial development in the health and safety law in the UK in response to the continuous changes that are taking place in the world of work where new types of employment largely relied on women and young workers.

Statistics, both at the EU and the UK levels, confirmed that the majority of temporary workers are young workers (OSHA 2009). If the health and safety policy is correctly applied, these aforementioned categories will be the best protected in the world of work, particularly; in the UK, where young workers are heavily relied upon in today's labour market. Since the MHSWR 1999 apply the reasonable practicability test in different areas, it was alleged by the European Commission that the regulations seemed to fall short of the standard required under EU law in the field of health and safety which is one of strict liability for those who hold duties at work (*Commission v UK c-127/05*).

CHAPTER FOUR CURRENT LEGISLATIVE FRAME WORK TO HEALTH & SAFETY

The allegation of having two different approaches by the EU and the UK law in the area of health and safety was questioned in practice, in different case-law. This will be further explained in the next Chapter where employers' liability will be investigated. The European approach is dramatically different from that under the UK law. The UK approach is result-based which is consistent with the general purpose of the HSWA 1974 (Great Britain: HSE 2001). Thus when the legislation refers to risks, it is not contemplating risks that are trivial or unlikely. It is not the purpose to impose burdens on employers that are wholly unreasonable. The aim is to spell out the basic duty of the employer to create a safe working environment. This is intended to bring about practical benefits, bearing in mind that this is an all-embracing responsibility extending to all workpeople and all working circumstances as was recommended by the Robens Committee in its Report (Para 27 of the judgement of the case).

The legal approach under the EU Law seems to be stricter than 'reasonably practicable', which is still the standard of care to be found under most of the existing UK regulations. The level of duty under the EU law is one of strict requirements such as 'suitable and sufficient'. The aim of EU law is to reduce risk to the lowest possible level and tackle it at source through preventive measures. Thus a risk assessment has been the mainstream of EU law. It is not the aim here to compare European health and safety legislation with that of the UK, so much as to explain how the two legal systems have prioritized the occupational health and safety issues at work. This has proved to be controversial in a number of recent cases where workers claimed that the level of protection is higher than 'Reasonably practicable', especially as the legislation in question was enacted in order to implement the EU law (*Allison v London Underground Ltd* [2008] EWCA Civ 7; *Stark v The Post Office* [2000] EWCA Civ 64). It is worth mentioning here that a case was brought before the CJEC by the European Committee in 2005 against the UK for failure to comply with the Framework Directive 89/391/EEC. The Directive provides in Article 5 that the employer has a duty to ensure the health and safety of workers in every aspect related to work. As an exception from that rule, Member States may provide for the exclusion or limitation of employers' responsibility where 'occurrences are due to unusual and unforeseeable circumstances, beyond the employers' control, or to exceptional events, the consequences of which could not have been avoided despite the exercise of all due care'.

CHAPTER FOUR CURRENT LEGISLATIVE FRAME WORK TO HEALTH & SAFETY

It was argued that by applying the reasonably practicable standard of care the UK allows an employer to escape his responsibility if he can prove that the adoption of measures by which it is possible to ensure the safety and health of workers would have been grossly disproportionate in terms of money, time or trouble when balanced against the relevant risk. The case was reviewed by the CJEC over two years and it was only on 14 of June 2007 that the court reached its verdict. The CJEC had dismissed the action brought by the Commission. Consequently, the court held that:

“The Commission has not established to requisite legal standard that, in qualifying the duty on employers to ensure the safety and health of workers in every aspect related to work by limiting that duty to what is reasonably practicable, the United Kingdom has failed to fulfill its obligations under the Directive.” (Judgment of the Court of Justice of the European Communities (CJEC) in *Commission v UK* c-127/05)

Thus, there will not be any practical changes in the UK's policies and practices at the workplaces and the UK 'Reasonableness' thinking for occupational health and safety will be retained. (Leighton et al. 2007). This will be further examined in Chapter 5, where the employer's liability will be considered. 'So far as reasonably practicable' retains flexibility in the law and contrasts with the EU legal system where the law is written in strict terms as has been explained earlier on. This is still the case today as far as health and safety is concerned which helps to explain an important feature of the UK health and safety law which is largely influenced by broader concepts of flexibility and functionality. This clearly can be seen as an attempt to avoid imposing undue burden on the employers and finding a balance between the employer's business and the protection of his workers' health and safety.

Other regulations which met with the EU Directives in its scheme to deal with risk at source instead of attempting to alleviate the consequences and encouraged the prevention and proactive strategy are the PUWER of 1992 and the PPE of 1992. These regulations require the employer to carry out an assessment and must provide his employees with adequate and full instruction, training and information on the risks that it will help to limit. It can be said that the overall provisions of these Regulations fulfilled the principal requirements of the EU Framework Directive though it is argued that the Regulations excluded the employees of employment agencies from their scope by only requiring the employer to ensure that suitable

PPE is provided to his employees Regulation 4 (1), which can be seen as a breach of the Temporary workers Directive 91/383/EEC. In this context, it must be said that the new Directive adopted recently by the EU in 2008, on temporary agency workers (which has been discussed previously in this Chapter), means that this group of NSW could be one of the most protected groups if the law were to be correctly applied.

4.6 Major Achievements of Modern Health and Safety Policy

Today, in the UK, health and safety is not a marginal issue and it is increasingly recognized that it is an area which can have a crucial influence on virtually every aspect of the workplace. This is demonstrated still further by other areas of law, relevant to health and safety, which pertain to related issues, for instance disability discrimination law and other aspects of discrimination law since 1995 when the Disability Discrimination Act (hereafter DDA) came into force. The Equality Act 2010 which came into force in October of the same year intended to provide a new legislative framework to protect the rights of individuals in addition to the existing rights. The 2010 Act imposes a duty on the employer to make 'reasonable adjustments' for staff to assist them in surmounting any disadvantage ensuing from impairment such as providing assistive technologies to use a computer. Employees under the Equality Act 2010 will now be able to complain of harassment even if it is not directed at them, if they can prove that it makes an offensive environment for them (Legislative Comments, Employment 2010). Another category of NSW which was recently brought into consideration is temporary agency workers as a new piece of legislation was enacted regarding them.

The Agency Workers Regulations of 2010 regulate the UK agency sector. Under these regulations temporary agency workers are entitled to equal treatment so that agency workers receive the same core employment rights as directly employed workers. No less favourable than the user enterprise would engage or does engage a directly employed worker doing the same or similar tasks. This should at the very minimum comprise pay, holiday entitlements and working time rules, including overtimes, work breaks, rest periods and night work. The key pieces of regulations in this area are the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003.

CHAPTER FOUR CURRENT LEGISLATIVE FRAME WORK TO HEALTH & SAFETY

With these legislation temporary agency workers should be in better position than it is often alleged. This raises a question about the application of the law in such areas and the way that employers' carried out their legal duties. One of the main features of the modern health and safety legislation is its comprehensive coverage as it applies to any workplace. This can be clearly seen from the definition of 'Workplace' under Regulation 2(1) of the Workplace (Health, Safety and Welfare) Regulations 1992: "Premises or part of premises which are not domestic premises and are made available to any person as a place of work". This is also the case under Regulation 2(1) of the Provision and Use of Equipment Regulations 1992 as it defines 'Work Equipment': "Any machinery, appliance, apparatus or tool and any assembly of components which, in order to achieve a common end, are arranged and controlled so that they function as a whole".

A great emphasis is given to safety management which, in particular, mirrors the modern concern not only with accidents but also with occupational health risks. This applies to the requirements regarding risk assessment, the principles of prevention, monitoring and review measures under the Management of Health and Safety at Work Regulations 1999. Given this, it is obvious that these regulations have put greater stress on the concept of risk assessment than that which already appeared under the existing legislation at the time. Another area of great importance is the nature of duties and requirements imposed by the new regulations. The level of duties in pre-existing UK legislation is generally provided with the qualification "so far as reasonably practicable". However, as with the 'Six-Pack' of 1992 it can be said that although the level of duty seems to be stricter than 'reasonably practicable', this standard of care is still to be found in the new Regulations. For example, Regulation 17(5) of the Workplace Regulations 1992 which states that: "Requirements only apply to certain premises 'as far as reasonably practicable". However, since these regulations were enacted as a response of the UK to the EU law in the area of health and safety, thus the form of wording used to refer to the level of duty is that used by the EU law, which is one of strict requirements such as 'suitable and sufficient'. For example, Regulation 21 of the Provision and Use of Work Equipment Regulations states that. "Every employer shall ensure that suitable and sufficient lighting ... is provided at any place where a person uses work equipment".

Other terms and wording are used in the EU law with a strict level of duty such as: ‘appropriate’ which is used in Regulation 19(1) of the Provision and Use of Work Equipment Regulation: “Every employer shall ensure that where appropriate work equipment is provided with suitable means to isolate it from its sources of energy”. Thus, it is suggested that it will be the courts who decide which level of duty is required in the light of the wording used.

4.7 Occupational Health and Safety at Work, ‘On-going Concern’

Significant improvements in occupational health and safety at work, as a result of all the successive legislation, can be seen in the reduction of work-related illness, injuries and accidents (HSE, statistics 2010-11). One of the fundamental developments in the health and safety system in the UK in recent years is the rise in the importance of occupational health. Some concerns still persist and some problems are still unsolved. In other words, it is undeniable that a major advance has been made in the UK health and safety system. Nevertheless, it is argued that more workers are now suffering from ill-health because of their work than those who are injured in accidents. For example, stress and musculoskeletal disorders represent a major threat in over half of all cases (Great Britain. HSE, Annual Report 2009-2010). Thus, occupational health was placed at the center of health and safety policy in a strategy which was adopted by the HSE in 2000. The overall aims of the strategy were to create new incentives into health and safety. It aimed to identify new approaches to reduce further rates of accidents and ill health caused by work, especially approaches relevant to small firms. The revitalizing strategy has far-reaching objectives. These aims and objectives reflect all the changes in the world of work and the need for the regulatory framework and system to match it. Preventing accidents and ill-health, rather than dealing with the consequences, must be the priority. Certain areas of work, mainly the construction sector, still have a high rate of accidents which needs to be reduced (Great Britain: Union of Construction, Allied Trades and Technicians (hereafter UCATT), Small isn’t Beautiful, Construction workers death 2007/08: Employer size and circumstance). In the same context, the enforcement system in the UK needs to be improved. In doing this, it is important to increase funding for regulators, employ more inspectors; and stiffer penalties must be imposed on employers who breach their statutory duties.

Another area which has been brought into consideration over the years is the corporate responsibility for health and safety. There have been continuous public and political demands for tougher enforcement and accountability for corporations' killings. This to a large extent was due to some major accidents which led to deaths and major injuries. A number of attempts to legislate and introduce a new offence of corporate killing had failed, before a new Act was eventually passed in June 2007 making provision for a new offence of corporate manslaughter. It was called the Corporate Manslaughter and Corporate Homicide Act 2007 and it is concerned with health and safety. Prior to the new legislation a corporate body could be prosecuted for a number of criminal offences including manslaughter. A company could be convicted of manslaughter as a result of the company's gross breach of duty of care owed to the victim. However, before the company could be convicted of manslaughter a 'directing mind' of the organization had to be guilty of the offence whereas under the new Act liability depends on a finding of gross negligence in the way in which the activities of the organization are run. This means that the company will be committing an offence if the way the organization was managed has resulted in the death of a person to whom the organization has breached its duty of reasonable care. The Crown Prosecution Service authorized a charge of corporate manslaughter against Cotswold Geotechnical Holdings Ltd (*R v Cotswold Geotechnical (Holdings) Ltd* [2011] EWCR Crim 1337). The prosecution arises from the death of Alexander Wright, on 5 September 2008, during the course of soil investigation work by CGH on land near Stroud in Gloucestershire.

Investigations of this kind represented a significant proportion of the company's business. It was a small company which employed eight people in total. The Crown asserted that there was a gross breach of duty by the company in any event because when Mr Eaton left the site, as he did, even if he assumed that the deceased would not enter trial pit 5, he himself had already entered three trial pits at the site which were not significantly different from trial pit 5 in depth and lack of support. It was therefore not in the least surprising that the deceased went into trial pit 5 on the same basis and for the same reason. In reality, the allegation was that there was a system of work in place which meant no more and no less than that it was company practice for the deceased (and for that matter Mr Eaton himself) to enter into dangerous, unsupported pits. With such cases brought against companies it is hoped that the companies' liability under the new legislation in addition to that under section 37 of the HSWA 1974 will form a significant deterrent from breaching their health and safety duties.

4.8 Conclusion

The modern health and safety system in the UK encourages employers to establish approaches and processes of internal self-regulation in order to provide better standards of health and safety. It is undeniable that the HSWA 1974 had a positive effect on the incidence of injuries, accidents and ill health in the workplace. Nevertheless, the legal framework built in the UK health and safety system under the 'Six-Pack' that was passed to implement EU law, had put occupational health and safety at the heart of modern legislation. These regulations reflected the EU approach for adopting a broader picture of health and safety issues, and covered new areas and required new obligations for health and safety management. The legal framework was based on preventative and protective measures aiming to reduce risk significantly. It attempted to impose stricter liability on employers by requiring them to fulfill particular duties. However, the nature of risk changes constantly and so legislation must be sufficiently comprehensive, or at least flexible enough to accommodate these permutations. It is also the role of the management to comply with the legal requirements. In other words, improving health and safety is not only about preventing work-related risk, it must also promote better working conditions and environments which requires motivated workers and competent managers.

Thus, the challenge is not to pass new legislation but rather to promote a change in attitude, in the culture and behaviour in the workplace in order to enhance the efficiency of such legislation. This was the main thrust of Lord Young's recent report (2010) which reminds us of the necessity of taking responsibility and exercising common sense. Extending health and safety legislation inappropriately results in the creation of a damaging compensation culture which constitutes: "a real and costly burden" Lord Young (2010, p. 7). The use of initiative and good sense is to be encouraged and it is important to recognize that over-legislation could result in a legal strait-jacket which would do more harm than good. Although recent statistics by the Health and Safety Executive (2010-11) showed a reduction in work related-illness, there are still 26.4 million working days lost per year due to illness and injury. It is clear that despite the best intentions and efforts of legislators and employers, illness and injury will always be with us and it behoves both employers and employees to work together in a coordinated manner to reduce risk in so far as may be possible. While it is true to say that NSWs are better catered for in matters of health and safety than ever before, there remains to be addressed the difficulty of ensuring that practice matches theory when it comes to the enforcement of health and safety law. NSWs may still not fare as well as their standard counterparts in matters of case law. Such matters will be examined and developed in the following Chapter in which the common law, still a significant source of health and safety law in the UK, will be discussed.

CHAPTER FIVE

Employer's Liability in Common Law

5.1 Introduction

Chapter 4 intended to explore how the law works through legislation to protect those at work. However, the role of law is not only defined by prevention or control of the uncertain nature of accidents or ill-health but also deals with the outcome when such situations arise. Accidents will always occur and people at work fall ill because of work. This part of law relates to responsibility and liability. Liability and damages for personal injury, death and ill-health nowadays are brought through civil action under the common law tort of negligence, and also for breach of statutory duties. Obviously, there are differences between the two torts. This will be examined in the light of some recent judicial decisions in various cases where workers seek damages for their injuries and diseases that were contracted as a result of their employer's breach of duty of care in common law or breach of their statutory duties. The central aim of this Chapter (see Research Question 3, p. 3 above) is to look at the application of common law regarding liability for personal injury by reference to NSWs in order to explore whether it would be easier for those employed in the different forms of non-standard work arrangements, who suffered damages to bring a claim for it under either areas of tort and which tort would provide better protection. The relationship between tort and regulations has always been a difficult one, as Lee (2011, p.555) points out:

“...there is no obvious hierarchy between tort and various types of regulations, the degree and intensity of the interaction between tort and external standards quietly varies. Diverse and complex interaction between regulations and tort are to be expected, but the complexity of even this small area suggests an enormous task ahead in understanding the broader relationship between regulation and tort.”

5.2 The Tort of Negligence

It is beyond the purpose of this chapter to give an extensive background of the history of the law of tort; however, it is crucially relevant to cover the nature and extent of the employer's duty of care as well as the development of it over the years. In addition, key elements of a cause of action in negligence will be considered in depth. This is to show how complicated it can be for workers who pursue a claim against their employer to succeed in recovering damage. Accordingly, the situation of NSWs raises some concerns in this regard. The common law tort of negligence is one of the most important type of torts in regards with civil liability for wrongfully-inflicted injury, or at least a very large part of it (Lunney and Oliphant, 2008). The modern tort of negligence was authoritatively expounded in the case of (*Donoghue v Stevenson* [1932] AC 562) where the neighbour principle, as it will be explained later in this Chapter, was introduced for liability of negligently inflicted harm applying to all types of damage, whether caused by acts or omissions.

The claimant in this case alleged that she and her friend had entered a café in Paisley, near Glasgow, and her friend had purchased a bottle of ginger beer for her. The dark green colour of the bottle made it impossible to see its contents. The claimant drank some of the ginger beer, and as she was pouring more into her glass the partly decomposed remains of a snail came out of the bottle. She alleged that she suffered shock and severe gastro-enteritis as a result. The House of Lords' (HL) decision favoured the complainant, establishing the modern concept of negligence, by a majority of three to two. It stated "in spite of a contrary decision in a similar case, that "Mrs. Donoghue's pleadings were 'relevant', that is, that they disclosed a cause of action" (Ferrari, 1994, pp.82-83). The decision set that negligence could be actionable in any circumstances in which one person suffered personal injury or physical property damage as a direct, close foreseeable result of the act or omission of action. The plaintiff who suffered personal injury could also seek litigation without being in a special relationship or having a contract to prove their cases.

5.2.1 The Legal Requirements of Tort of Negligence

In essence an employee who seeks to prove negligence must establish particular legal requirements including the existence of duty of care, breach of duty of care and loss or damage caused by the breach.

5.2.1.1 The Existence of the Duty of Care

The failure to take reasonable care cannot give rise to the liability if there is no duty. The most famous statement about duty was made by Lord Atkin in *Donoghue v Stevenson*:

"The rule that you are to love your neighbour becomes in law, you must not injure your neighbour; and the lawyer's question, 'who in law is my neighbour?' receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law is my neighbour? The answer seems to be - persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question." (*Donoghue v Stevenson* [1932] AC 562, p. 580)

His Lordship provided a general concept of duty which was applicable to a wide range of different situations. This is important for NSWs because the connection that they might have with an employer and his premises does not depend upon the category to which the workers belong, they are entitled to protection for the duration of their stay, according to the neighbour principle. Increasingly, over the years, the circumstances in which a duty of care was recognized moved even further and any limitation on the scope of liability under the principle of *Donoghue v Stevenson* was overcome by later decisions. This was evident in (*Grant v Australian Knitting Mills Ltd* [1936] AC 85) where the Privy Council raised important questions regarding the liability of the manufacturer. Among these was the question about whether the fact that the defect might have been discovered precluded the imposition of a duty of care on the manufacturer. Grant, the plaintiff, contracted dermatitis as a result of wearing woollen underpants which had been manufactured by the defendants

(Australian Knitting Mills Ltd). The garment in question contained an excess of sulphite. Upon purchase, he wore them for one entire week without washing them beforehand. The Privy Council held that the defendants were liable to the plaintiff. Subsequently, on one hand, the principle for duty of care has been taken further and further and a rapid expansion in the scope of the tort of negligence has continued as new situations of duty were covered. On the other hand, the extension of the scope of duty to other types of cases was not without problems. This, for instance, would apply where the type of loss that the claimant has suffered is psychiatric or is only pure economic loss. In such cases the attitude taken by the courts was to limit the employer's liability and to limit the scope in which a duty of care will arise. This has been considered in a number of different examples of case-law where the issue of the type of damages was questioned. For example, in the case of *Page v Smith* [1996] 1 W.L.R 855 Lord Lloyd set out the test for claims for psychiatric injury:

“The approach in all cases should be the same namely, whether the defendants can reasonably foresee that his conduct will expose the plaintiff to the risk of personal injury, whether physical or psychiatric, if the answer is yes, then the duty of care is established, even though physical injury does not in fact, occur. There is no justification for regarding physical and psychiatric injury as different kinds of damage.”

In the recent case of *Grieves v FT Everard and Sons Ltd and others* [2007] UK- HL 39), it was argued that the psychiatric illness suffered by the worker (G) was not a reasonably foreseeable consequence of the employer's negligence. The court dismissed the worker's appeal on the ground that psychiatric illness was not a reasonably foreseeable consequence of his employers' breach of duty. It was not reasonably foreseeable that the creation of a risk of an asbestos-related disease would cause psychiatric illness to a person of reasonable strength. It can be seen from the outcome of the latest case how important is the question of foreseeability to determine the existence of a duty of care. The existence of a duty of care is the primary requirement for a successful claim in negligence. Bearing this in mind it is obvious that the common law provides wider protections for NSWs as the test in negligence is simply one of reasonable foresight not in the employment category as is the case under the different statutes as will be discussed later in this Chapter.

All the other factors and requirements for the negligence claim including fault, causation, and damage are irrelevant if the employer is under no duty to the claimant worker. This shows the prominent role of the duty of care concept in the claim of negligence. The duty of care is not merely an issue of factual examination which largely depends upon reasonable foreseeability of injury to give rise to a duty of care; other factors were adopted in more recent cases. This can be seen in the various decisions over the years, in considering the employer's liability in common law. Among these decisions was the decision in *Caparo Industrial plc v Dickman* [1990] 2 A.C. 605, where it claimed that the foundation for the current approach of the courts in establishing a duty of care was found. This approach is commonly known as a three-stage test as it includes three elements foreseeability, proximity and the fairness, justice and reasonableness of recognizing such a duty. This will be further discussed considering the legal requirements of the existence of duty of care. D auditors of company accounts, C had brought an action against D and another, directors of F, a public company in respect of which the report had been prepared, alleging negligent misstatement. C had purchased shares in F as part of a takeover bid and, placing reliance on TR's report, had bought further shares. The report was subsequently proved to have to give a false picture of F's profits and C suffered a loss.

The Court of Appeal had drawn a distinction between existing shareholders, to whom TR owed a duty and potential investors in respect of whom no duty was owed. TR submitted that it did not owe a duty to either group, since the necessary degree of proximity between the parties was missing. Held, allowing the appeal, that no duty was owed either to existing shareholders, or to potential investors, since for a duty to arise, three factors had to exist, namely: (1) a sufficient degree of proximity in the relationship between the parties; (2) the knowledge that the report would be communicated to the shareholder or investor in connection with a particular transaction in the contemplation of the parties, and (3) the shareholder or investor would place reliance on the report when deciding whether to enter into the relevant transaction. It seems that the scope of duty of care issues continue to be far from easy to resolve. This can be clearly seen in the recent case of a *Corr v IBC Vehicles Ltd* [2008] UK - HL 13, where various matters in regard to the employer's duty of care were argued.

In 1996 the claimant's husband was employed by the defendant as a maintenance engineer when he suffered severe head injuries caused by malfunctioning machinery. Following lengthy reconstructive surgery, he began to suffer post-traumatic stress disorder causing him to lapse into depression. Prior to the accident he had been a happily married man of equable temperament. In February 2002 he was admitted to hospital after taking a drug overdose; by March he was diagnosed as being at significant risk of suicide; in May he was further diagnosed as suffering from severe anxiety and depression, and three days later he committed suicide by jumping from the top of a multi-storey car park. The claimant, his widow and the administratrix of his estate, brought proceedings against the defendant. The case raises a number of issues relating to the scope of the duty of care, the issue of foreseeability and causation as well as the issue of how much the worker contributed to the damages that he/she suffered. These issues were considered in detail by the Supreme Court which held different views on the matters in question. Although the employer accepted that he owed a duty to Mr Corr as his employee to take reasonable care to avoid causing him personal injury, He denied being liable for a consequence of a kind which is not reasonably foreseeable. Thus it was alleged that Mr Corr's suicide fell outside the employer duty of care owed to him by the employer.

“The justification for such argument is that it is unusual for a person to be under a duty to take reasonable care to prevent another person doing something to his loss, injury or damage deliberately.” (*Corr v IBC Vehicles Ltd* [2008] UK HL 13, Para. 9)

On the other hand, it was argued that the employer was in breach of his duty to Mr Corr and that this breach caused the accident. As a consequence of this breach Mr Corr suffered severe physical injury and psychological injury from which, up to the date of his death, he might have recovered with better support. The depressive illness from which My Corr suffered before and at the time of his death was caused by the accident. It was noted that it was his depressive illness which drove Mr Corr take his own life (Lord Neuberger of Abbotsbury [2008] UK HL 13, para. 56) “It is accepted that Mr Corr's severe depression is properly the liability of the employer, it was hard to see why Mr Corr's suicide should not equally be the liability of the employer”.

The standard of care in the law of negligence is the standard of an ordinary careful person. Nevertheless, this has been queried by Lord Oaksey in *Bolton v Stone* [1951] A.C. 850) as he pointed out that. "Even for an ordinary careful man it would be impossible if he were to attempt to take precaution against every risk which he can foresee".

5.2.1.2 The Nature of the Employer's Duty of Care

An employer owes a range of common law duties to his workers in the law of negligence. These duties have long been developed to form an important part of the employer's responsibility to safeguard the health and safety of his workers. It has been traditional to recognize these duties under four headings, duty to provide a competent staff, a safe plant and equipment, safe system of work and safe place of work. These duties represent different aspects of the employer's general duty to take reasonable care (Horsey and Rackley, 2011). All of these duties arise in the law of negligence and there are therefore examples of a duty to take reasonable care to protect workers against any foreseeable risk of injury or disease. The employer's duty to provide competent staff is broader than only to ensure that workers are able to carry the job they are employed to do. Every worker is entitled to expect that reasonable care will have been taken by the employer in the selection and training of other workers. Also, this duty includes the provision of supervision and training where necessary. A worker injured by the misbehaviour of a fellow worker can sue his or her employer for the breach of direct duty of care and also on the basis of vicarious liability for the other worker's negligence.

Nonetheless, it is important for the injured worker to establish that the employer was aware of the other worker's misbehaviour and this was reasonably foreseeable. Employers, in some cases, will not be liable for their workers' negligent conduct if it is not reasonably foreseeable (*Smith v Crossley Bros* [1951] 95 Sol Jo 655). In other words, whether the employer has fulfilled the duty to provide competent staff will largely depend on the knowledge she/he has about the worker concerned. In this regard it is relevant to highlight the importance of holding an employer vicariously liable in negligence for his/her employee's wrongful act or omission while being employed by

that employer. In order to hold an employer vicariously liable certain conditions must be satisfied. Among these is the relationship between the employer and the wrongful employee. This leads to the case where NSWs are involved in performing some tasks and work on the employer's premises, such as independent-contractors. The latter type of NSW might be employed by the general employer but the question here as in the case with *Viasystems (Tyneside) Ltd Thermal Transfer (Northern) Ltd* [2006] QB 510 is concerned with the extent to which the general employer would be held responsible for the competence and supervision of those people, although they are not directly employed by him. This situation seems to be argued and not easily settled where the issue of vicarious liability of the employer in negligence is raised. Therefore, key questions and approaches have been considered in recent cases considering vicarious liability and where a line should be drawn in order to hold an employer vicariously liable for the negligence of his/her employees. This includes the importance of establishing a close connection between the act and the purpose for employing the wrongful employee and whether the latter acts during the course and scope of employment. However, it is argued that in addition to these legal requirements, practical reality must be recognized. This all contributes to the difficulties that might be faced by those who seek personal claim under the common law tort of negligence. In principle, employers are only liable for employees.

The *Viasystems (Tyneside) Ltd Thermal Transfer (Northern) Ltd* case decision was a radical one because it considered extending liability for those who are not directly employed by the employer concerned but are on his premises temporarily, directly employed .i.e. independent contractors. In July 1998, the Claimants engaged the first Defendants to install air conditioning in their factory. The first Defendants subcontracted ducting work to the second Defendants. The second Defendants contracted with the third Defendants to provide fitters and fitters' mates on a labour only basis. One such fitter was Mr Megson. His mate was Darren Strang. They were installing the ductwork under the instruction or supervision of Mr Horsley, a self-employed fitter contracted to the second Defendants. Both Mr Megson and Darren Strang were thus employed by the third Defendants (para. 3). At the time of the accident, the men were working in a roof space. Access was by crawling boards using the roof purlins.

Mr Megson needed some fittings and sent Darren Strang to get them. Darren was away for a few minutes, during which Mr Horsley was helping Mr Megson with the ducting. Mr Horsley naturally expected Darren to return by a sensible route, but he did not so return. On the contrary, he attempted to return by crawling through some sections of ducting that were in place. These moved and came into contact with part of a fire protection sprinkler system. The relevant part of this system fractured – hence the flood. The judge had no difficulty in finding that Darren was negligent, as he obviously was (*Viasystems (Tyneside) Ltd Thermal Transfer (Northern) Ltd* [2006] QB 510, para 4). It was the third Defendants' case before the judge that Darren Strang did what he did on the express instruction of Mr Horsley. The judge rejected this and there was no appeal against this finding. Indeed the third Defendants accepted the judge's primary findings of fact (*Viasystems (Tyneside) Ltd Thermal Transfer (Northern) Ltd* [2006] QB 510, para.5). Additionally, as part of the employer's duty of care the employer is responsible for ensuring that the workplace is not dangerous and that the plant, machinery and other equipment used by the worker are safe and suitable for the task. It is important that the employer not only provide plant and equipment but also ensure that it is in a safe condition for the worker to use (Hendy and Ford, 2009).

The common law was enhanced by the Employers' Liability (Defective Equipment) Act 1969, which provides that the employer is liable for equipment which is defective through the negligence of a third party. This applies to cases where the employer might not be liable because the equipment was obtained from a reputable source and the fault lies in the manufacturing process. In this case the Act enables the worker to sue the manufacturer for negligence, and the employer may join the manufacturer as a defendant. This was a significant development in order to provide further protection where more parties are involved in addition to the direct employer. This highlights an important aspect of the purpose and nature of the employer's duty of care in common law. Furthermore, the employer's duty of care in common law requires him to provide a safe system and there is no particular or inclusive rule that can be relied on to summarise the duty of employer to provide a safe system of work. Thus, the content of this duty will depend considerably on the type of work. In general it requires the employer to assess the method of work and general conditions in order to provide the necessary instructions, training, supervision, warnings and safety equipment to prevent

the risk from developing. In addition, the duty of care extends to preventing psychiatric damages as well as physical injury. Therefore, claims for psychiatric injury which are based on exposure to unacceptable levels of stress became prevalent in recent years (*Sutherland v Hatton* [2002] 2 All E.R. 263). The question here is whether a harmful reaction to the pressure of the workplace is reasonably foreseeable to the worker concerned (Hendy and Ford, 2009). In answering such a question, several factors were considered. At the head of these factors are the nature and the extent of the job done by the workers. Is the workload more than normal for particular work? Are demands being made of this worker unreasonable when compared with the demands made of others in the same or comparable job? The high point in this respect, whatever type of work, is the interaction between the individual worker and the job which causes harm. The nature of the work should be taken into consideration in order to assess the employer's duty to provide a safe place of work. It is not uncommon that the nature of the job requires workers to work in an unsafe situation. In such cases the duty of employer to provide a safe place of work is likely to require him to provide instruction and safety equipment. Nevertheless, in other cases where the risk is obvious and easy to avoid, it is possible for the employer to avoid liability by arguing that the accident was the worker's own fault.

On the other hand, since the duty of care in common law is personal, then a reasonable employer should consider each one of his workers individually. For example, the duty owed by the employer to an inexperienced worker may be higher than that owed to experienced workers (*Paris v Stepney Borough Council* [1951] A.C. HL 367). It raises some concerns, especially where young workers are working in one of the most dangerous sectors which have a high rate of accidents, such as the construction sector. This would raise even more concern where those young workers are engaged in one of the NSW. A recent example of such a situation was given in Chapter 2, in the case of *R v Holton* [2010] EWCA Crim 934) where a 15 year-old casual worker was crushed to death by a collapsing wall on a site at which he had been working: on a building site without proper instructions and supervision of the employer. In this case it seems the employer was not reasonable as he did not pay enough attention to the ability of this young worker to carry out such a dangerous task. To compound his error, he ignored a prior warning about the dangerous condition of the wall (see Chapter 3).

Having considered all the aforementioned elements of the employer's duty of care in common law leads to the question of the standard of care required, and in the case of failing to fulfil this duty, to what extent the employer can be liable. In other words, where an employer failed to take reasonable care for the health and safety of his workers, how far can he or she be held liable? This is to say, when can the matter of the employer's liability in common law be raised?

5.2.2 Observation upon the Legal Requirements

As has been explained earlier the concept of liability in negligence was slow to take hold; this is so in regard not only to establishing of the employer's duty of care towards his workers but also to other necessary ingredients which should exist in order to give rise to the duty of care (Weir, 2006). These elements which, are usually called policy factors, have been considered in establishing a personal claim of negligence. This set of factors in addition to the existence of employer's duty of care was highlighted and given particular attention in a number of recent cases such as the case of *D v East Berkshire Community Health NHS Trust* [2005] 2 AC 373) where the functions and the nature of duty of care were in question. Parents sued for compensation for psychiatric harm resulting from unfounded accusations of child abuse. In this context, it was emphasized that there should be a proximate relationship between the employer and his workers that makes it fair, just and reasonable for the former to owe a duty of care to the latter. The function of proximity is to identify the person who owes a duty to take care and those most closely affected by his act or omission.

The finding of proximity can play an essential role in determining the existence of a duty of care. The policy requirements are used by courts to deny a duty of care where it seems to be undesirable (Hendy and Ford, 2009). The argument behind this is to avoid imposing liability where there are no reasonable grounds for that. Thus the situation where the existence of a duty of care is arguable should be one in which the court considers it fair, just and reasonable that law should impose a duty of a given scope on one party for the benefit for the other. It is important to point out that the consideration of the policy requirements and the proximity test will all depend on the factual circumstances of each case.

However, it should be borne in mind that finding these additional elements in conjunction with the foreseeability of damage emphasizes the difficulty surrounding a claim of negligence. Accordingly, this raises a question about the situation of NSWs who might be involved in a personal injury claim. In some situations NSWs might lack some legal requirements in terms of having the conventional relationship of employer/employee while in practice factual elements indicate them to be in some kind of relationship that makes it fair, just and reasonable that the employer owes them a duty to protect their health and safety. It is important to recognize that the courts are more likely to find sufficient proximity where it can be fair, just and reasonable to impose a duty of care, for example, the case of *Rice v Secretary of State for Industry* [2007] EWCA Civ 289.

5.2.3 The Breach

Assuming that a common law duty of care is established considering all the previous requirements, the next question will be whether the employer has broken it. Since the employer's liability in common law is a fault-based liability then it must be shown that the employer was in breach of his duty to take reasonable care of the worker. Liability is then dependent on the proof of the breach of duty and resultant damages. Proving all these requirements, the worker will be entitled to claim recovery for his damages. Establishing all these criteria will provide the worker with significant opportunity to sue his employer for damages but he can still find it difficult to prove causation. Whether there has been a breach of duty will be determined by the requirements of reasonableness. This was long established in *Blyth v Birmingham Waterworks Co* [1856] 11Exch 781, where it was established that the standard of care and what is negligent conduct will depend on the 'reasonable man' (Lord Alderson B in *Blyth v Birmingham Waterworks Co* [1856] 11 Exch 781). Reasonableness is a flexible notion, very much dependent upon the circumstances, and not subject to strict rules of law. Thus what is reasonable depends upon what a person ought to know, and what actions are reasonable in the light of that assumed knowledge. This involves a consideration of the risk of harm occurring and the likely seriousness of that harm which should be balanced against the practicability, and costs, of measures to avoid that foreseeable risk. This can be illustrated considering various decisions of the courts in different cases.

Some cases require a cautious employer to recognize the greater risk of harm in order to provide sufficient steps to protect his workers. Therefore, it is relevant to shed a light on the type of risk and the way the employer deals with such risk, this is essential to establish the employer's liability and whether he acts reasonably to avoid causing damage to his workers. Furthermore, it is relevant to consider the kind of damage that worker suffers from and whether that damage is recognized by the law to be actionable. The key point here is that much of the attention in case law is given to the duty of care whereas little attention has been given so far to the breach of such duty. According to Lord Bingham in the case of *D v Berkshire Community Health NHS Trust* [2005] 2 AC 373 "the concept of duty has proved itself a somewhat blunt instrument for dividing claims which ought reasonably to lead to recovery". This was extensively argued in the recent case of *D v East Berkshire Community Health NHS Trust* where the function and the nature of duty of care were considered. It was argued that the damage requirement has received inadequate consideration. "The claimants alleged negligence on the part of the defendants' child welfare professionals who had formed the opinion that the claimants had been guilty of abuse towards their children".

In the same context, in a number of cases the duty of care has been denied because of the type of damage demanded. This raises a particular difficulty as to deciding whether the loss of the worker is recognized as one of the injuries that is covered by law. For example, in the case of *Grieves v F. T Everard & Sons Ltd* [2007] UK HL 39 where the question addressed by the court was that whether the development of pleural plaques constituted personal injury in itself. In answering such a question the court concluded that: "A claim for negligence will only lie where damage has been caused that is worth suing for". This refers, as stated earlier in this Chapter, to the challenges and difficulties that might be faced by workers who decide to pursue a claim for personal injury under the common law tort of negligence. On one the hand, this means it is not always going to be a straightforward way of recovery. However, on the other hand, this does not deny the potential of the common law tort of negligence in providing an important way to protect the health and safety of individuals.

5.2.4 Causation

Another important step for a successful claim in negligence is the conventional test of causation. As the employer's liability in common law is negligence-based, then it is for the worker (the claimant) to prove that, but for the defendant's wrongful conduct, (the so-called 'but for' test) he would not have sustained the harm in question. In other words, it must be established that the employer's negligent conduct was the factual cause of the worker's loss and damages. The best illustration of this can be seen in the early case of *McWilliams v Sir William Arrol* [1962] 1 All ER 62.. In this case although the employer was in breach of his duty to make safety belts available to his workers, he was not liable for the death by falling of a steel erector who would certainly not have worn a belt, had one been dangled in front of him. However, a lesser degree of causal connection was justified to hold the employer liable for his negligent conduct in the case of *Fairchild v Glenhaven Funeral Service Ltd* [2002] I.R.L.R 533. The claimant was employed at different times and for different periods by more than one employer, each subject to a duty to protect the claimant against a known risk of contracting mesothelioma from inhalation of asbestos dust. The risk eventuated as a result of the employer's failure to perform that duty, but because of the limitations of scientific knowledge, the claimant could not prove exactly when the mesothelioma occurred. In these circumstances, it was sufficient that the breach of duty materially increased the risk of the claimant contracting the disease.

The decision of the House of Lords in *Fairchild* has been clarified in more recent cases involving asbestos. In the case of *Barker v Corus UK Ltd* [2006] UK HL 20, three appeals were made to the House of Lords (now the Supreme Court) by employers against decisions of the Court of Appeal in respect of their liability to damages for negligently exposing the respondents to asbestos dust. The appellant employer argued that he should not be held liable as a matter of causation since the claimant could not prove which exposure had caused the disease. Moreover, he submitted that he should only be liable according to the share of the risk created by his breach of duty among the other employers for whom the respondent worked. The Supreme Court allowed the appeal but applied the exception to the usual rule of causation that was set in *Fairchild*.

Thus it was held that a worker who had contracted mesothelioma after being wrongfully exposed to asbestos at different times by more than one employer or occupier could sue any of them notwithstanding that he could not prove which exposure had caused the disease (Lord Rodger of Earlsferry, in the case of *Barker v Corus UK Ltd* [2006] UKHL 20). Regarding the question of contribution to the creation of risk, it was held that the appellant whose breach of duty actually contributed to it was liable for the full amount of that harm regardless of any contributions due to other persons or events. As the tort is negligence-based, the burden is on the claimant to prove his case by establishing duty, breach and causation. After establishing all these criteria, the worker will be entitled to damages but, in practice, difficulty will arise most of the time for the worker to prove causation. On the other hand, employers, in some cases, may enjoy a number of defences to resist liability which can be raised on some occasions. However, there are not many defences available to the employer where a claim of negligence is being made. This is because once the worker has pursued a claim of negligence against his employer this means he must have shown that the employer acted unreasonably in breach of duty and that this contributed to the damage which was reasonably foreseeable (Weir, 2006).

5.3 The Tort of Breach of Statutory Duty

Since this Chapter is concerned with an important part of the application of health and safety law regarding the employers' liability for any damage that was caused as a result of the breach of their duties, it is relevant to discuss the tort of breach of statutory duty. The development of the tort of breach of statutory duty has been seen as a way of overcoming the limitations and restrictions imposed upon the liability of employers for injuries to their workers. Historically, however, it was not until the latter part of the twentieth century that a few Acts of Parliament and regulations expressly provided that breach of a particular statutory duty is to give rise to civil liability as a result of a breach of this duty (Chapter 2). This can be explained as most of the health and safety regulations are designed to prevent accidents rather than to compensate for injury and disease suffered by workers at work and much of this legislation is concerned with creating criminal sanctions. At the top of these regulations is the HSWA 1974.

The scope of the employer's liability was severely restricted in the nineteenth century by the existence of some defences, in particular the defence of common employment which made it almost impossible for injured workers to obtain compensation for their injury. It excluded or restricted the responsibility of the employer in respect of personal damages to the person employed, if the injuries were directly caused by the negligence of any other person in common employment with him. Thus by the end of the century it was recognized by Parliament that the courts had gone too far in restricting liability. Then a few Acts were passed, at the time, which marked what can be called the emergence of social security legislation. These include the Employer's Liability Act 1880 and the Workmen's Compensation Act 1897. Moreover, in a radical evolution the courts began to accept that industrial safety legislation could give rise to a civil claim of action and rejected the common employment defence in actions brought to enforce this right. In *Groves v Lord Wimborne* [1898] 2 QB 402, it was held that the defence of common employment did not apply to actions for breach of statutory duty.

Since then many important pieces of regulation relating to health and safety have been enacted which succeeded in establishing a greater opportunity for workers who seek to claim damages for their injuries and diseases in the workplace. It is frequently alleged that legislation relating to health and safety reflects the desire to provide greater protection to workers who suffered injury or ill-health than the common law of negligence would allow. Furthermore, it has been argued that there is an advantage to workers who suffered damages in basing their claim on the health and safety regulations, because many of them impose strict or absolute duties and hence lead to liability even in the absence of fault. All the worker needs, in contrast to a claim under the common law of negligence, is to prove a breach of statute and that the breach caused him damage. To this, much can be said in order to show how far, in practice, this represents the reality. However, as a starting point it is important to establish whether breach of a particular statutory duty is actionable in damages. Thus, it was relevant to consider the tort of breach of statutory duty in the sense of whether the worker would be provided with a better opportunity than that which would be open to him via the common law tort of negligence.

5.3.1 The Scope of Protection in the Tort of Breach of Statutory Duty

Breach of statutory duty is considered as separate and independent from other related torts such as negligence. There is either a claim for breach of statutory duty, arising out of the statute itself, or a claim for common law negligence, or both but there is no action at common law for negligence in the execution of a statutory duty. However, the fact that the employer has breached a statutory duty to protect the health and safety of his workers may well be relevant in a negligence case as powerful evidence of breach of the common law duty of care. On the other hand, there have been several cases in which an employer has been found not to have been negligent at common law, but was found liable or in breach of statutory duty. This was seen in some early case-law such as *Kelly v WRN Contracting Ltd* [1968] 1WLR 921; and there are cases in which the defendant has been found to have discharged the statutory duty, but to have been negligent at common law., for example, *Bux v Slough Metals* [1974] 1 All ER 262. It has also been claimed that since many of the health and safety regulations impose strict liability, it is easier for the claimant to establish liability under such regulations than to prove fault under the tort of negligence (Howes, 2007).

The question here is about the impact of such allegations on NSWs and where they would be best protected. This leads one to look at the level of the standard of care imposed by many of the health and safety regulations in the UK. As much of the health and safety legislation nowadays gives rise to civil liability, it was crucial to consider whether the legislation provides clearly-defined duties which support the worker's claim against his employer for breaching the duty in question. Unless the statute in question expressly gives rise to a civil claim of action, it proves difficult to establish such liability and to enable a claim to be made for breach of statutory duty. For example, some health and safety regulations intend to impose strict liability by prescribing the result to be attained. The obvious example of such regulations is section fourteen of the Factories Act 1961 which stipulate that: "Every part of any machinery... shall be securely fenced". In such cases it is hard for the employer to escape liability by simply pleading that all reasonable care was taken to fence the machinery. This will be examined considering the standard of care required by regulations in the light of some recent decisions regarding workers' claims for breach of statutory duty.

There are particular requirements which must be proved before a worker can establish liability for breach of statutory duty. These requirements show the essence of the present approach of modern law regarding whether a breach of statutory duty gives rise to a private right of action for damages.

5.3.2 The Pre-requisites of Liability

The civil right of action for breach of statutory duty arises where it can be shown that the statute in question has been intended to create civil liability. The worker should also prove that there has been a breach of statutory duty towards him; and that he or she belongs to the class of persons whom the statute is designed to protect; and finally that the damage or injury was caused or was materially contributed to by the breach. These particular elements are essential for the worker to be able to succeed in an action for breach of statutory duty.

5.3.2.1 The Statute Must Provide a Ground for Civil Liability for Breach of a Statutory Obligation

Prior to establishing any other requirements, the worker must show that the statute in question gives a rise to a civil action for breach of the duty imposed by its provision. It is unusual for a regulatory framework to create a right of action in civil law, as much of this legislation is concerned with creating criminal sanctions. This can be clearly seen from the wording of section 47 (1) (a) HSWA 1974:

“(1) Nothing in this part shall be construed (a) as conferring a right of action in any civil proceedings in respect of any failure to comply with any duty imposed by section 2 to 7 or any contravention of section 8.”

However, the HSWA 1974 does give the right to bring a civil action for damages caused by breach of health and safety regulations made under the Act unless regulations provide otherwise in subsection (2) of section 47. Thus, for example, the MHSR1999 originally excluded civil liability for breach of these regulations.

However, the Management of Health and Safety at Work and Fire Precautions (Workplace) (Amendment) Regulations 2003 amended the 1999 regulations so as to activate the statutory presumption of civil liability contained in the HSWA 1974, subject to specific limitations. The effect was to permit civil claims to be brought against employers and workers who are in breach of duties imposed on them by those regulations. On the other hand, there are some statutory provisions which state explicitly that a breach of the duty imposed by the statute will give rise to a civil claim for damages. Among these regulations is the Trade Union and Labour Relations (Consolidation) Act 1992 which contains clear statements to this effect as it was set in section 20 of this Act. In the latter example there would be no difficulty in establishing civil liability as this is clearly expressed in the statute but this is not always the case as most legislation is silent on this matter. Thus, an approach to interpretation has been adopted by the courts in order to consider the intention of the Parliament where the statute is silent on the question of civil liability. The courts have tended to rely on a series of presumptions which have been developed over the years. It is necessary to construe the wording of the statute in order to decide on this issue. In *Cutler v Wandsworth Stadium Ltd* [1949] AC 398, the House of Lords rejected the idea of general presumption of civil liability in cases where there was breach of duty imposed by statute. It confirmed that it all depends on a consideration of the whole statute in question and the precise nature of the statutory duty. However, this in itself can place the worker who seeks to sue his employer in a difficult position as the courts are in most cases unwilling to interpret the statute in question to give rise to civil action. The justification of this is usually based on the floodgates arguments as the courts attempt to avoid expanding the scope of the statute beyond its intended purpose.

5.3.2.2 Who Needs to Be Protected?

First and foremost, it should be noted that this requirement raises a number of issues which have been brought into consideration by the courts on several occasions. Generally it has been argued that the worker has a better opportunity of success in his claim if it can be established that he or she falls into a particular class of individuals whom the regulations were designed to protect. Thus it is increasingly important to clarify from the statutory provision who it is that can bring an action.

This is crucial since most of the people who are covered by regulations relating to health and safety are employees. This was made clear in for example, the amendment in 2003 of the Health and safety at Work Regulations 1999. Thus the revised Regulation 22 provides that:

“Breach of a duty imposed on an employer by these regulations shall not confer a right of action in any civil proceedings, insofar as the duty applies for the protection of persons not in his employment.”

Hence it follows, that only employees have a right of civil action for breach of the regulation. (Howes, 2003). Obviously this raises the question of other classes of workers who are not recognized for the purpose of many regulations as employees, particularly, those who are found in the different arrangements of NSW who seem to struggle, as has been shown in Chapter 3 of this thesis, when it comes to health and safety. This is relatively important as an increasing amount of work in industries such as construction, maintenance works and removal of asbestos etc., is being carried out by contractors and sub-contractors. This issue was considered in some early cases where the nature of employment relations was in question, in order to decide whether or not the employers owe a statutory duty towards their workers. For example, in *Smith v George Wimpey and Co Ltd* [1972] 2 All ER 7, an appeal was brought by the claimant, who was an independent contractor, against the judgement given on trial whereby judgement was entered for both defendants, dismissing the claimant's claim for personal injuries. The reasons for the trial judgment was that the defendants did not owe the claimant a duty under Regulation 3 (1) (a) of the Construction (Working Places) Regulations 1966. It was held that an individual contractor is under a duty to comply with the regulation in question in respect of his workman's safety and his own safety.

The same issue was argued in the more recent case of *Jennings v Commission* [2008] I.C.R. 988, where the question was raised concerning the existing health and safety legislation which has influenced those involved in NSW. In this case a claim for damages, by an independent contractor who suffered a severe injury while carrying out the contracted work, was rejected. This, to a large extent, was the result of not being an employee and then lacking an employment relationship as a primary requirement of the legislation to be covered.

The Recorder sitting in the County Court considered the 'factual reality' in determining whether an employment relationship of employer/employee exists. Thus it was found that there was a breach of duty of care and breach of duty to make a suitable and sufficient risk assessment under the relevant legislation. However, the Court of Appeal disagreed with the Recorder that there had been an employment relationship. The claimant entered a contract for service as self-employed, thus he was responsible for providing the work equipment and materials and was in control of how to deliver the work. Moreover, he was responsible for the risk assessment, not the employer and was not subject to supervision by the employer.

5.3.2.3 The Standard of Duty

The next requirement which needs to be met in the worker's claim for breach of statutory duty is to prove whether his employer has breached his duty. Addressing this question would not be an easy task for the worker since much depends on the standard of care that is expected from the employer under a particular statutory provision. Then it is the courts that will play an important part in answering such a question, as they interpret different regulations. This will involve careful consideration of whether various health and safety regulations provide clear direction and guidance in order for the courts to decide the claims brought before them. To consider this issue some of the recent courts' decisions will be considered, particularly those regarding the standard of care required from the employers. As has been seen in the previous Chapter many of the UK health and safety regulations, since the passing of the Six-Pack Regulations of 1992, have been providing a different standard of care in addition to the long standing standard of 'reasonable practicability'. For example, regulations can impose a high standard of care as an absolute liability where not much defence will be available for the employer, or strict liability, where an employer can enjoy some discretion in fulfilling his duty. In the case of *Stark v The Post Office* [2000] I.C.R. 1013, the worker argued that his employer owed him an absolute duty of care and he suffered a serious injury as a result of his employer's breach of that duty. In 1994 a postal delivery worker, David Stark, suffered serious injuries in the course of his employment when the front brake stirrup of the delivery bicycle provided for him by the Post Office broke and he was thrown over the handlebars.

He brought a claim for damages against the Post Office under both torts of negligence and breach of the employer's duty under regulation 6(1) of the PUWER of 1992. It was held that there was no liability on the employer in negligence and there had been no breach of the employer's duty under Regulation 6(1) of the PUWER 1992. The worker appealed- arguing that Regulation 6(1) imposed an absolute duty on his employer which was not affected by any lesser duty required by the Work Equipment Directive (89/655/ EEC) which the regulations were enacted to implement. Regulation 6(1) of PUWER 1992 states that "Every employer shall ensure that work equipment is maintained in an efficient state, in efficient working order and in good repair". The Court of Appeal held that:

"That the purpose of the Work Equipment Directive (89/655/E.E.C.) was to provide for minimum requirements for encouraging improvements in the standards of health and safety of member states to introduce absolute obligations, it recognised that, if member states already imposed obligations in respect of the level of protection higher than those minimum obligations sought to be imposed by the Directive, the higher obligations should be maintained; that regulation 6(1) of the PUWER 1992 clearly imposed an absolute obligation on the employer...and that, accordingly, since the bicycle was not in efficient working order when the stirrup broke, the employer was in breach of his statutory duty."

The Court of Appeal in reaching its decision considered the way in which the wording of Regulations 6(1) has been construed over the years and on different occasions in respect of health and safety of workers, as it is imposing strict obligations. It was argued that such an absolute duty imposed on the employer would make it easier for the worker to establish his claim (Howes, 2003). However, this will not always be the case for the worker, as courts might have interpreted the wording of the statutory provisions in a way that makes it more difficult for the worker to establish his personal injury claim. This was seen in a more recent decision by the Supreme Court in relation to the PPER of 1992. In the case of *Fytche v Wincanton Logistics Plc* [2004] UK HL 31, the worker, Mr Fytche was employed to drive a milk tanker. In doing his work he was supplied by his employer with boots that had steel toe caps in order to protect his toes from injuries such as falling milk chums. One winter day Mr Fytche's tanker was stuck on an icy country road. Instead of calling and asking for help as prescribed by the company's standard instructions in such a case, he decided to dig himself out, in doing so water penetrated into one of his boots through a tiny hole which he was not aware of it and caused him a mild frostbite in his little toe.

The injury kept him away from work for few months and left him with permanent sensitivity to cold in that toe. The worker brought a claim against the employer and argued that the boots were personal protective equipment within the meaning of Regulations 4 and 7(1) and (2) of the PPER 1992 and thus the employer had been under a strict obligation to keep them in an efficient state, in efficient working order and in good repair. Regulation 7 (1) PPER 1992 “Every employer shall ensure that any personal protective equipment provided to his employees is maintained (including replaced or cleaned as appropriate) in an efficient state, in efficient working order and in good repair”. In the first instance the worker’s claim was dismissed and it was held that the boots as personal protective equipment were suitable for the worker’s ordinary conditions of work. The worker appealed to the House of Lords as the High Court of Appeal dismissed his claim. The case was considered by five Lords who had different opinions on the employer’s duty under Regulation 7 of the PPER 1992. On one side of the argument there were those who argued that Regulation 7 imposed strict liability on employers to provide workers only with that PPE which is suitable for the protection against specific risks identified by the employer in the first place (Lord Hoffman in *Fytche v Wincanton Logistic Plc* [2004] UK HL 31). On the other side were those who concluded that the employer’s duty is absolute and not only confined to some specific risks to health and safety by an employer (Lord Hope of Craighead in *Fytche v Wincanton Logistic Plc*. [2004] UK HL 31). Obviously the case had commanded great attention in the Supreme Court, who finally reached a decision in favour of the employer, disagreeing with those who argued that the employer’s duty under Regulation 7 was an absolute one. The Supreme Court held that the concept of personal protective equipment being in an: “Efficient state, in efficient working order and in good repair”.

Regulation 7 of the 1992 was not absolute but had to be interpreted in relation to what made equipment: personal protective equipment. It had to be efficient for the purpose of protecting workers against the relevant risks. Thus the boots had been adequate for the worker’s ordinary conditions of work and the continuing existence of the tiny hole had not, therefore, been a breach of the employer’s duties under Regulation 7. In reaching such a decision the House of Lords extended the meaning of suitability of personal protective equipment in Regulation 7 to that stated under Regulation 4:

(a) “it is appropriate for the risks involved and the conditions at the place where exposure to the risk may occur; (B) it takes account of ergonomic requirements and the state of health of the person or persons who may wear it; (c) it is capable of fitting the wearer correctly, if necessary, after adjustments within the range for which it is designed; (d) so far as is practicable, it is effective to prevent or adequately control the risk or risks involved without increasing overall risk.” Another case where judges have struggled to define the level of responsibility of the employers in respect of their duty under the statutory provisions relating to health and safety is of *Allison v London Underground Ltd* [2008] EWCA. Civ 71. Several issues arose in this appeal among which was the allegation by the worker that his employer owed him an absolute liability to provide adequate training under Regulation 9 of the PUWE 1998. The worker submitted that the employer had breached this duty. The employee (Mrs Allison) began work for London Underground Limited in 1996. By 1998, she had trained as a driver on the Northern Line. After only a few months she developed a shoulder strain, which was found to be related to her task of handling the traction brake controller (TBC) which drove the train. After treatment she returned to work but was transferred to the Jubilee Line where rolling stock was more modern; it was thought that the TBC would be more suitable for her. Following her return to work, she was monitored and after reporting that she was having no problems, she was declared fit for full duties in September 2001. In early 2003 she developed tenosynovitis of the right hand and wrist due to strain from prolonged use of the TBC. Mrs Allison held the TBC in a particular manner, namely by resting her thumb against the camshaft of the handle.

She was given no specific instructions as to how the thumb was to be positioned in relation to the camshaft end while the handle was under pressure, although drivers were trained to keep their wrists straight and avoid dorsiflexion because it was recognized that applying pressure while holding the wrist in dorsiflexion could give rise to tenosynovitis. The judge in the first instance rejected the worker's submission that the duty to provide adequate training was strict or absolute and that the test did not depend upon reasonable foreseeability. The judge took the view that it would be impossible for an employer to devise training except by reference to the actual risks foreseen and those recognized from past experience. The judge then concluded that on the basis of that test the training was adequate.

Furthermore the judge was reluctant to accept the opinion of the expert that if the employer, in carrying out the risk assessment, had employed an agronomist to look at the specifics of the handle design and operation, that would reduce the risk of injury. The worker's claim was accordingly dismissed. However, she appealed against the decision in respect of Regulation 9. Regulation 9 (1) of the PUWER 1998 provides that: "Every employer shall ensure that all persons who use work equipment have received adequate training for purposes of health and safety, including training in the methods which may be adopted when using the work equipment, any risks which such use may entail and precautions to be taken". The appeal involved consideration of the construction of Regulation 9. The issues arose in this case all related to the way the court should construe the statutory provision in question. This particularly applies to the issue of whether the duty imposed by Regulation 9 was absolute and required no proof of any fault on the part of the employer.

In addition, another issue was considered, that of whether the adequacy of the training given to an employee should be judged by the result, in the light of what the employer knew about the risks at the time. There is no doubt, taking into account all the above mentioned decisions, that there is uncertainty surrounding the attempt of workers to establish their claim for breach of statutory duty. This raises the rationale of the interpretation process and its effect on workers' right to recover damages. It seems difficult for the courts to follow a reliable and consistent approach in interpreting the various provisions of health and safety regulations in order to set the standard of duty that the employers owe to their workers. Judges are still struggling to define the level of responsibility of the employer under many of the statutory provisions. In this context, it seems that the breach of statutory duty is unlikely to be of help to NSWs attempting to pursue a claim for such a breach. Unless he or she is directly employed by the party against whom the claim is made, NSWs would find it difficult to pursue a claim for their personal injuries. Even when NSWs succeed in proving their employment status as employees, they would have to struggle to benefit from the different provisions of health and safety legislation that provide a ground for civil liability for breach of statutory duty. However, in principle, NSWs have a better chance of establishing claim under the common law of tort for reasons previously explained. An advantage here is that the worker does not have to prove he/she belongs to any particular category. Even this has a caveat: the establishment of requisite criteria for a successful claim can be a lengthy and complicated, not to say costly, process.

5.4 Employment Contractual Liability

In principle, every employer owes a legal duty to employees to safeguard their health and safety either under common law or under the various health and safety legislation even in the case of most NSWs. However, this is provided that their working relationship satisfies the test set for the creation of a 'contract of employment'. This refers to the importance of the employment status of workers. The question of who is an employee employed under a contract of employment remains relevant given that many of NSWs strive to prove their occupational health and safety rights (McCann, 2008). As has been explained in Chapter 3 of this thesis, the phrase NSW tends to describe those not employed on a conventional, permanent basis. As a result, many NSWs struggle to prove that they are working under an employment contract (Great Britain: TUC, 2008). Groups such as casual workers, agency workers, home workers and others are vulnerable because they do not fit into the regulatory approach of the UK. Therefore, despite all the enhanced protection given to them in recent years as part of EU law's impact on the UK legal system, some forms of NSW still do not fully benefit from the range of the protection rights. The key question to be considered in this context is: who is to be responsible for the overall health and safety of many NSWs who are not employed under a contract of employment and therefore lack employee status?

A good example relating to health and safety at work is the case of *R. v Pola (Shah Nawaz)* [2009] EWCA Crim 655. In this case a casual worker who had been working on the building of a house extension was sufficiently controlled by his employer to qualify as an employee under the HSWA 1974, S 53. The result of this was that the employer was liable for offences under S 33 (1) (a) and 33 (1) (c), when the worker suffered brain injuries resulting from a fall from a raised platform at the site. The employer appealed against his conviction and sentence for offences under HSWA 1974, S 33 (1) (a) in failing to discharge a duty pursuant to S 2(I), and under S 33(1) (c) in contravention of the Work at Height Regulations 2005. The employer denied that he was an 'employer' within the meaning of the Act; and that the casual migrant worker on his site, was his 'employee'. The appeal was dismissed on the ground that sufficient evidence was found that justified the court's decision. Among this evidence was the mutual nature of obligations between the employer and the casual worker, as the worker was under an obligation to work during the day for which he was paid (*R. v Pola (Shah*

Nawaz) EWCA Crim 655, Para. 23). The case underlines the importance of properly investigating the employment status of workers and the nature of their working relationship. In this case the worker won because the judge applied a wider interpretation of the term 'employee' appropriate to the circumstances in hand. The case of *R v Pola* involves an important statement of principle in underlining that the legal duty owed by employers, under health and safety legislation, is owed to even the most 'casual of employees, provided their working relationship satisfies the test set for creation of 'contract of employment'. Another example is the early case of *Lane v Shire Roofing Co [Oxford] Ltd* [1997] P.I.Q.R. P 417. Mr Lane was a builder/roofer/carpenter who traded as a one-man firm. He was categorized as self-employed for tax purposes. He claimed damages from Shire Roofing on the basis that they failed to comply with their duty of care as his employer. If Mr Lane had been considered an employee, then Shire Roofing would have been obliged to compensate him from their insurance. The key question for the Court of Appeal was whether Mr Lane was an employee of Shire Roofing or whether he was self-employed/an independent contractor. There were good policy reasons in the field of safety at work to ensure that the law properly distinguished between employees and independent contractors.

The Court recognized that there are many factors to take into account, depending on the facts of each case. The Court identified a number of questions/principles, relevant to this particular case that could be used to determine whether a person was an employee or an independent contractor; among these are the element of control and whose business it was. On this basis the Court of Appeal decided that Mr Lane was an employee of Shire Roofing. The court considered that although the degree of control by the company would depend on the need to supervise and direct Mr Lane, it was quite clear that the job at the house was the business of the company and not Mr Lane's. The Court felt that the factual situation was much closer to the situation where an employer engages men simply to do labouring work, than to where a specialist sub-contractor is employed to perform some part of a general building contract. It can be seen from this decision that where a court is considering the issue of whether or not a person is an employee in the context of health and safety at work, they may take a wide view of what constitutes employment. As stated in the *Lane v. Shire Roofing* judgment: "When it comes to the question of safety at work, there is a real public interest in recognising the employer/employee relationship when it exists, because of the responsibilities that the common law and statutes place on the employer".

These cases show to what extent some NSWs could find themselves in a vulnerable situation with regard to their health and safety at work because of their employment status. NSWs come in many guises and the decisions concerning their status require careful examination. Given that the courts may adjust interpretation according to the circumstances that alter cases, there is room for compassion as well as justice, yet there can also be room for confusion. Sometimes a decision made by one court might be overturned by another. While the flexibility of law is necessary in the interest of justice and fairness, it means that it is not possible to make a categorical statement of a rigid definition. While this might be inconvenient for employers and their businesses, it is essential for the just and effective protection of all those at work.

5.5 Conclusion

This Chapter considers the employer's liability in the context of health and safety at the workplace. This covers the two important torts: the common law tort of negligence and the tort of breach of statutory duty, in addition to the employer's contractual liability. In doing this the legal rules in regard to both torts have been examined in order to establish employers' liability to safeguard the health and safety of their workers. Pursuing a claim for damages in either tort can be a difficult choice for workers employed in some forms of NSW, as they would be faced by a range of issues in establishing such claims. For example, issues begin with the ability of workers to prove the employers' fault in negligence or the expected standard of duty from the employer under various statutory provisions. NSWs would be in a better position when the courts broaden their approach in deciding whether they are working under the common law contract of employment or not, by considering the implied circumstances and factual factors rather than only relying on expressed and written terms. This does not mean being employed in one of the different forms of NSW would immediately mean that a person would always lack the legal status as an employee. What this means is that NSWs, in many situations, would be challenged in their claims for personal injury because of their employment status, either under the common law or the different pieces of legislation, as has been demonstrated earlier in this Chapter. In the long term, this will raise an important question about how the principal aim of the law of tort, to compensate the victim for the wrongdoing, will be obtained.

However, this should not disguise the substantial development in employers' liability for the health and safety of their workers over the years. This goes back as far as the middle of the nineteenth century with the passage of the earliest Acts. This has been dealt with in depth in Chapter 2 where an historical background was given to the evolution of the health and safety law. That has shown how important has been the change in the legal world which reflects the desire to provide protection for workers during their employment. For this reason and with the continuous change in the pattern of work, new challenges have been faced. In recent years, for instance, there has been a significant rise in claims for diseases, in comparison with accident claims. As a result there should be a reconsideration of the rules of law under both torts. To some extent, this explains the shift of the health and safety regulations from only punishing the wrongdoing and compensating the victims, to a more preventative approach.

CHAPTER SIX

The Investigation into Workers' Experience of Health and Safety Issues in South Wales and Their Relative Impact on Standard and Non-standard Workers

6.1 Introduction

As explained in Chapter 1, this thesis aims to explore the efficacy of health and safety law in relation to the changing nature of employment relationships represented by NSW (see the Research Questions at p. 3 above, in particular question (3)). This required carrying out two types of investigation, theoretical and empirical. Throughout the previous chapters the thesis has sought to build a theoretical framework for this investigation. This chapter concerns the empirical research, from specifying the hypotheses and the research questions to the consideration of the methodology and the design of the research instruments. The hypotheses (which are set out in paragraph 6.2 below) are based on the assumption that NSWs might be more vulnerable to risk than their counterparts, standard workers. The consideration of available methodologies is contained at 6.3. It was decided that a postal questionnaire was the best method to obtain quantitative data and semi-structured interviews the most appropriate method of obtaining qualitative data within the practical limitations of the research, the details of which are dealt with within this chapter.

6.2 The Hypotheses

The thesis focus on looking at the application of health and safety law in order to explore to what extent it does cover those who are employed in the different forms of NSW (Research Questions 1 and 3). The central issue is the challenge to health and safety posed by NSW. Given the nature of NSW, as was extensively discussed in Chapter 3, the hypothesis is that the application of health and safety law is going to be difficult because, by their very nature, NSWs' work conditions are variable and different from those of their counterparts in SW.

For example, homeworkers and teleworkers are going to be less managed as they might often be off-site and thus subject to weaker management than SW. The further hypothesis, following on from this, is that such conditions may render NSWs more vulnerable to accidents and ill-health than their counterparts in standard employment. Work can have an impact on health in numerous ways and this includes various aspects of protection. Among these is the effect of work on the health and safety of those involved. Hence it was fundamental, in order to measure such an impact, to take into account not only how the law functions, as has been done through the three previous Chapters (2, 4 and 5) but also to consider the experience of those workers and how they assess their working lives and working conditions (see Research Question 2, p.3 above). Safeguarding and providing for the continuing improvement in occupational health and safety is vital in order to achieve a productive, competitive modern labour market (Kent, 2009). This seems not to be the case with the continuous debate concerning health and safety in the workplace in the UK. This can be seen with many studies and reports by different bodies, stressing the need to improve industrial health and safety.

“Great Britain has one of the best health and safety records in the world. However, although the rates of death, injury and work-related ill health have declined for most of the past 35 years, the rate of decline has noticeably slowed.” Great Britain. HSE, Great Britain: Be part of the solution (June 2009, p. 6)

Most of the literature, however, examined and investigated extensively the growth of NSW as an important aspect of the changing nature and structure of the labour market and as a key factor for the labour market flexibility (Atkinson 1984; Leighton and Syrett 1989) but as considered in Chapter 1 there are relatively few studies researching whether the experience of such changes has a positive or negative effect on workers’ physical and mental health. In other words, little work on the consequences of NSW exists in the UK, whilst there are extensive studies conducted by the European Union which have revealed important findings about the influence of NSW on the health and safety of those involved, as has been explored in Chapter 3. These various studies have constituted a key point of the theoretical foundation of this research. The insecurity of some forms of NSW is a significant factor influencing the vulnerability of NSWs to health and safety risks. Thus, it was recognised from the outset that the experience of workers involved will constitute a significant part of the data collection in order to assess sufficiently the real impact of their work.

In addition, the case of NSWs raises an important question about the law's efficiency and what might be needed in terms of practical and policy solutions to improve their situation (see Research Question 4, p. 3 above). This raises the importance of the qualitative research in order to interview those who are responsible for enforcing the law and making policies that enhance its efficacy. Although interviews were the main methods for the empirical part of the study, a short self-completion questionnaire was sent out. This aimed to strengthen the findings of the interviews and contribute to the purpose of providing explanatory insights into the data from varying sources. Also, by conducting this type of questionnaire it was hoped that the questionnaire data would provide a broader overview of the experience of NSWs.

6.3 The Methodology

In order to ensure that the chosen empirical methods should address the relevant questions, deep and wide research was necessary, so that all bases might be covered. Therefore, it is essential to conduct feasible research, taking into consideration the necessity to ensure a close fit between the methodology and focus of study (Pole and Lampard, 2002); hence quantitative and qualitative methods were deemed appropriate. A combined strategy such as this is more likely to produce good results in terms of quality and scope.

“The technical version about the nature of quantitative and qualitative research essentially views the two research strategies as compatible. As a result, mixed methods research becomes both feasible and desirable.” Bryman (2008, p. 606).

“The main rationale for the use of mixed methods research was in terms of completeness... a more comprehensive picture would be generated.” Bryman (2008, p. 613).

In order to construct a theoretical framework an extensive review of relevant literature was conducted. In Chapter 2 the social influences on the function and review of health and safety law were considered; in Chapter 4, the evolution of a prophylactic approach to health and safety via the medium of risk assessment and related strategies was explored. In Chapter 5 the legal responsibilities and practices of employers, in the same connection, were examined. For the empirical element it was recognised that quantitative and qualitative research methods would provide important insight and knowledge into workers' experience and how the legal

framework applies to the particular issues of NSW. Since an important part of the research attempts to provide a clear picture of challenges brought by NSW to health and safety (see Research Question I, p. 3 above), it was decided that conducting a questionnaire would be helpful in fulfilling such an aim. Quantitative tools like questionnaires can produce the bare outline of a picture: in this case, of the efficacy of current health and safety law in the workplace. Simple questions yield simple answers, which facilitate the harvesting of numerical statistical data. The qualitative research tool chosen was selected for its ability to probe and reflect the complexity of the issue whilst at the same time revealing as clearly as possible the way in which the law works, and how well it does so in practice. As one aspect of the qualitative research, semi-structured in-depth interviews are particularly useful as the issues to be investigated cannot be observed directly (Denzin and Lincoln 2008; Kvale, 1996).

6.3.1 Quantitative Research (the Questionnaire)

The research was quantitative in nature, being based on the hypothesis that NSWs might be more susceptible to health and safety risks. Postal questionnaires were sent to a sample of the population, the aim being to acquire a broad picture of workers' experience of health and safety at work. This was to test the hypothesis that NSWs might be at greater risk than their standard worker counterparts. This quantitative form of research (the questionnaire) allows specific issues to be investigated and also helps in selecting people to be interviewed later.

6.3.1.1 Constructing the Sample for the Questionnaire

The aim was to gather a sample of a variety of subjects engaged in different forms of NSWs. This would constitute the main research sample. For purpose of comparison, a control group; was sought. This seemed the most efficient way to provide an appropriate context for answering key questions in questionnaire research. Hence, at the early stage of designing the questionnaire it was important to include questions that would cover both standard, and non-standard, workers. SWs were used as the control group where a possible comparison could be made between them and NSWs in order to explore the extent to which workers' contractual employment may affect their position at work.

With regard to the size of sample it was decided, bearing in mind the possibility of a low level of response, as is often the case with a postal questionnaire, to aim at large sampling. This would provide a better chance to gather a considerable amount of data (Bryman, 2008). The intention was to collect a random sample of subjects living in the chosen areas, with a view to covering a variety of occupations and discovering any significant links between different sectors and occupations, and the effect of various occupations on the health of the subjects. Names and addresses were taken from the telephone directories of the aforementioned areas. In order to ensure sampling a variety of occupations, it was decided to access residents of both urban and rural areas. On this account, 2000 questionnaires were sent to addresses in Cardiff which is a densely-populated city in which both heavy industry and service industries co-exist, along with hospitals, schools and a university. 500 questionnaires were also sent to addresses in Carmarthen and Pembrokeshire. Carmarthen is largely a rural area in which the main industry is agriculture: sheep and cattle farming. Pembrokeshire is also a rural area in which the main industries are fishing and tourism. It is not suggested that the sample would necessarily prove to be representative of the entire United Kingdom but it was a diverse sample, a microcosmic slice of British working life.

6.3.1.2 Encouraging a Good Response

It is generally accepted that questionnaires, arriving unsolicited, by post, will be ignored unless the recipients consider them relevant and/or have some incentive to respond. Bearing this in mind, it was decided that the envelopes should be addressed by hand and that the questionnaires would be accompanied by covering letters explaining the purpose of the study and offering an incentive in the form of supermarket vouchers valued at twenty-five pounds. It was hoped that the personal touch of handwriting envelopes would obviate the danger of the communications being discarded as 'junk-mail'. The supermarket vouchers would be provided for the establishment favoured by the person receiving them; it would have been unwise to assume that one or two supermarkets, chosen by the researcher, would necessarily be accessible to all respondents, especially those living in the rural areas. The other important consideration, which went a long way to ensuring respondents' cooperation, was that of confidentiality. The covering letter explained that the information given would be treated in the strictest confidence, full names would not be recorded and personal details such as telephone-numbers needed only to be provided by those who wished to be interviewed.

It was made clear that no information would be shared with other establishments, for example, commercial companies, and that data would be confined to use in the designated research project.

6.3.1.3 Pilot Test

A pilot test was conducted in order to establish the suitability of the questionnaire design and face-to-face interviews (the qualitative aspect). A number of questionnaires were distributed within the University campus where students gave their feedback on the questionnaire's design. Also some face-to-face interviews took place with a group of professionals and research students who combined work with their studies. The response was very satisfactory on both counts, confirming the appropriate nature of the chosen methods.

6.3.1.4 Timing

It was essential to ensure that the response-rate to the questionnaire would be as high as prompt as possible. For this reason and in order to obviate the danger that questionnaires might remain unattended to by workers, during holiday seasons, the envelopes were posted in April, so that data would begin to arrive soon afterwards and in advance of the long summer holiday period. The collection of data took three months from the time when the questionnaires were sent out, via pre-paid postal return.

6.3.1.5 Constraints on the Research Regarding the Questionnaires

One significant constraint was that, having used telephone directories as the source for names and addresses, there was no way to discover who, in the directories, was employed. As a result of this impediment, 108 questionnaires were returned because, for example, the prospective recipients had either moved or were deceased. 159 returned questionnaires were from people who had retired or who were unemployed. Of 499 returned questionnaires, only 232 were useable, having come from respondents who were in paid employment or who were self-employed. Responses from retired people who provided comments were considered in the overall narrative of the research, though not used for the purpose of analysis or cross-tabulation. Out of 2500 questionnaires dispatched, 232 is not a great number.

However, the financial resources were limited and so seeking a larger sample by sending out an even greater number of questionnaires was not possible. Another constraint was time. The examination and processing of each questionnaire had to be done individually, which is time-consuming and painstaking. It was only during this process that the invalidity of so many questionnaires was discovered.

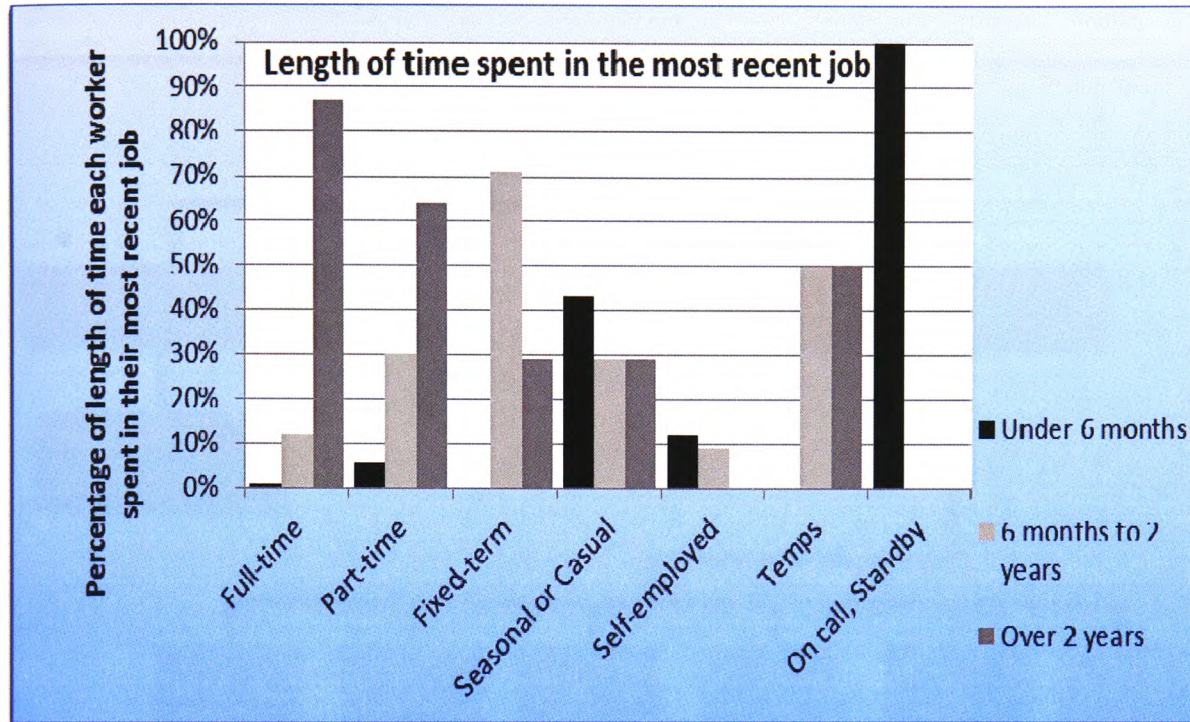
6.3.1.6 Analysis of Questionnaire Responses

Analysis of the questionnaire was by SPSS following the advice in key texts such as Field (2009) and Pole and Lampard (2002). SPSS is used by many researchers in this type of research. Blaxter, Hughes and Tight (2006, p.204) stressed that “The most widely quantitative package in social science departments in universities is probably SPSS (Statistical Package for the Social Sciences) it has the analytical tools which assist variable comparisons”. The presentation of data in the form of bar-charts was chosen in the interests of clarity. The potential of cross tabulation was considerable, to test the main hypotheses, to find out if there would be a correlation between the type of employment and health and safety issues. SPSS was a useful tool for the research. It enabled, for example, analysis between the safety training, risk assessment and the different types of employment, to detect any correlation between these health and safety aspects and the type of work. A copy of the questionnaire can be found in the annexure hereto. The questionnaire is short but focuses on key health and safety issues which are indicative of the application of health and safety law (see Annexure 1). The results of the questionnaire can be divided into categories.

First, the basic data which was sought through question one (Have you been in paid employment during the last 2 years?) and- question three (In what way do you work in your main or only job?). Of 499 returned questionnaires only 232 were in paid employment at the given period of time. Question two asked an essential question as to the length of time spent in the most recent job. One reason for this question was to detect any significant difference between SWs and NSWs. The second reason was to detect those likely to be more vulnerable because they had only short-term contracts. The following figure shows the findings. The majority of respondents from the different types of employment category had been working in their recent job over two years, whereas in the questionnaire there were three options from

which participants could choose. Question two was what is the length of time you have spent in your most recent job? (Under 6 months; 6 months; over two years

Figure 6.1 length of time spent in the most recent job

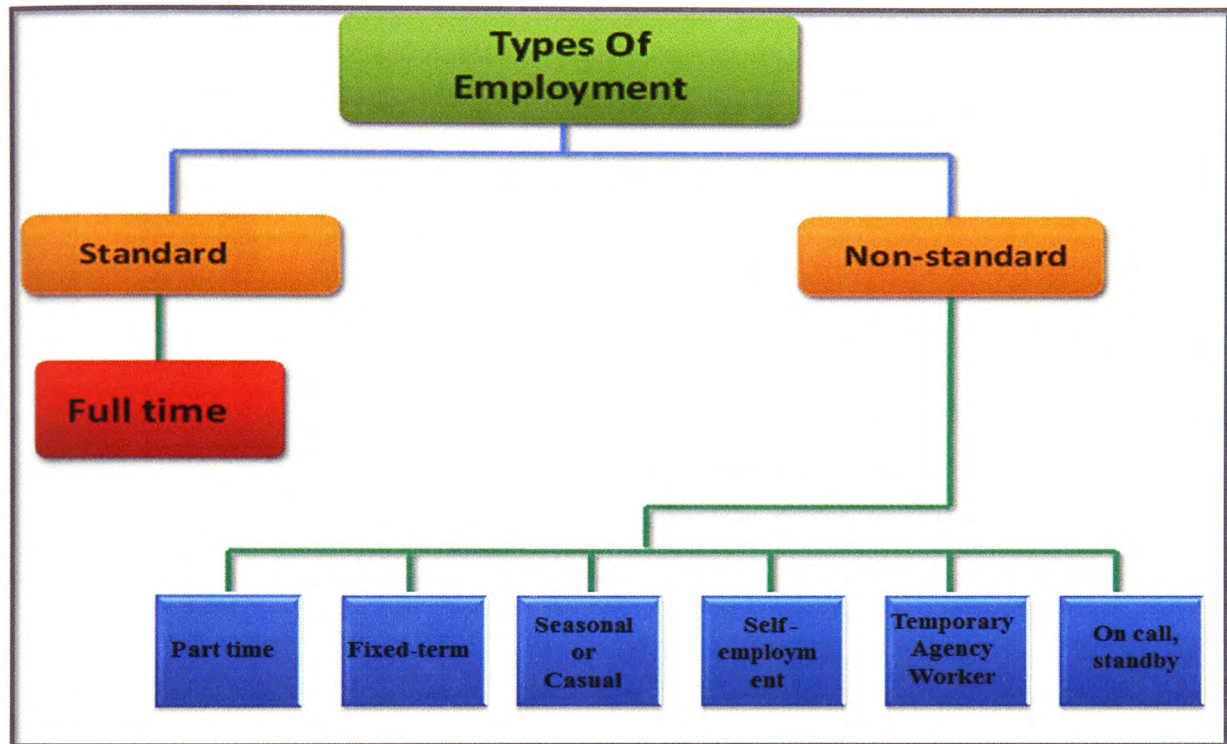


It was noted that in the seasonal or casual and on call/standby categories most of the respondents had been working for less than six months. It is in the nature of these types of employment for working periods to be of short duration. Seasonal or casual workers might be employed at harvest time in rural areas or during academic vacation periods in urban areas, in industries such as catering or postal delivery service.

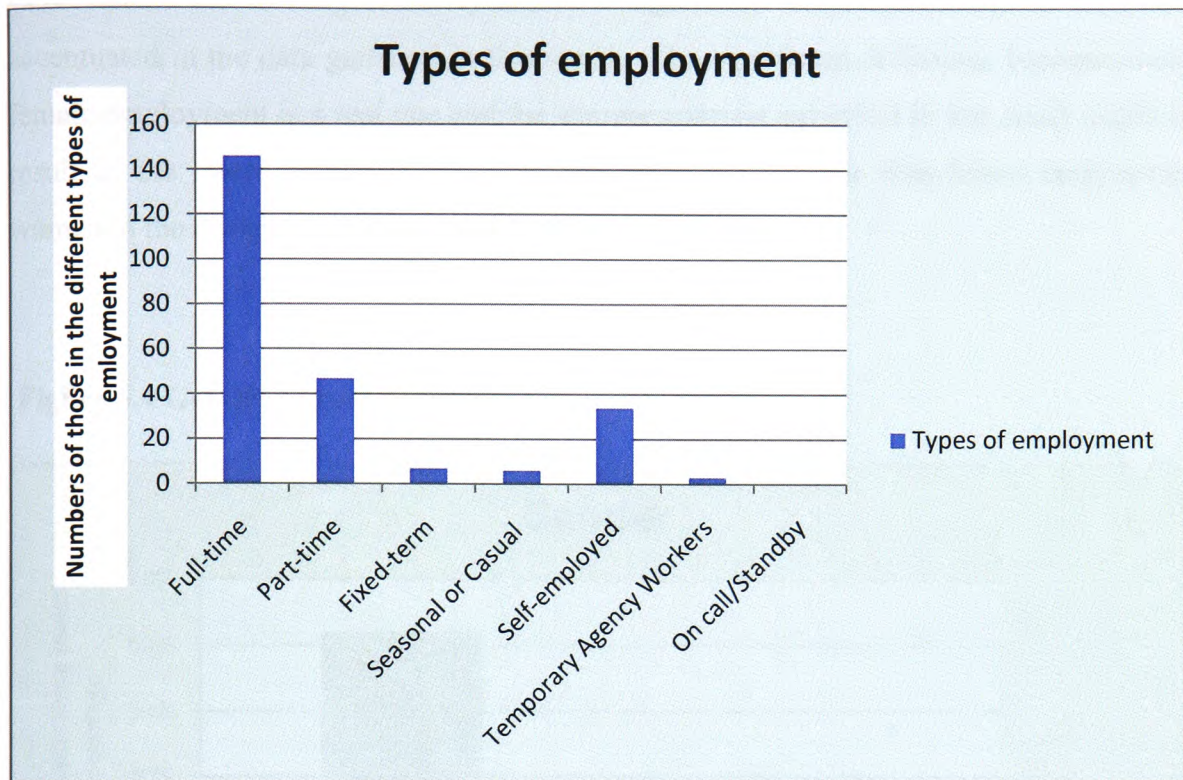
Question three sought to ascertain the employment status of the respondents and the above figures- .i.e. figures 6.1 and 6.2 helped the categorization of respondents. SW would form part of the control group whereas NSWs would make up the experimental group. Of the 232 valid questionnaires, 146 questionnaires came from full-time, permanent employees who were, by definition, recognised as SW and 47 questionnaires from part-time employees who form the largest category of NSWs in the U.K (LFS since the recording year 1992 to October 2010). They were followed by 34 questionnaires from self-employed people who took second place in the statistics referring to NSWs.

The remaining returned questionnaires were a mixture of fixed-term (full or part-time), seasonal and casual and temporary agency workers. The data collected from all the questions were examined and then cross-tabulated in relation to particular areas.

Figure 6.2 types of employment



This shows the types of employment according to the categories, as given in the questionnaire.

Figure 6.3 categories of employment

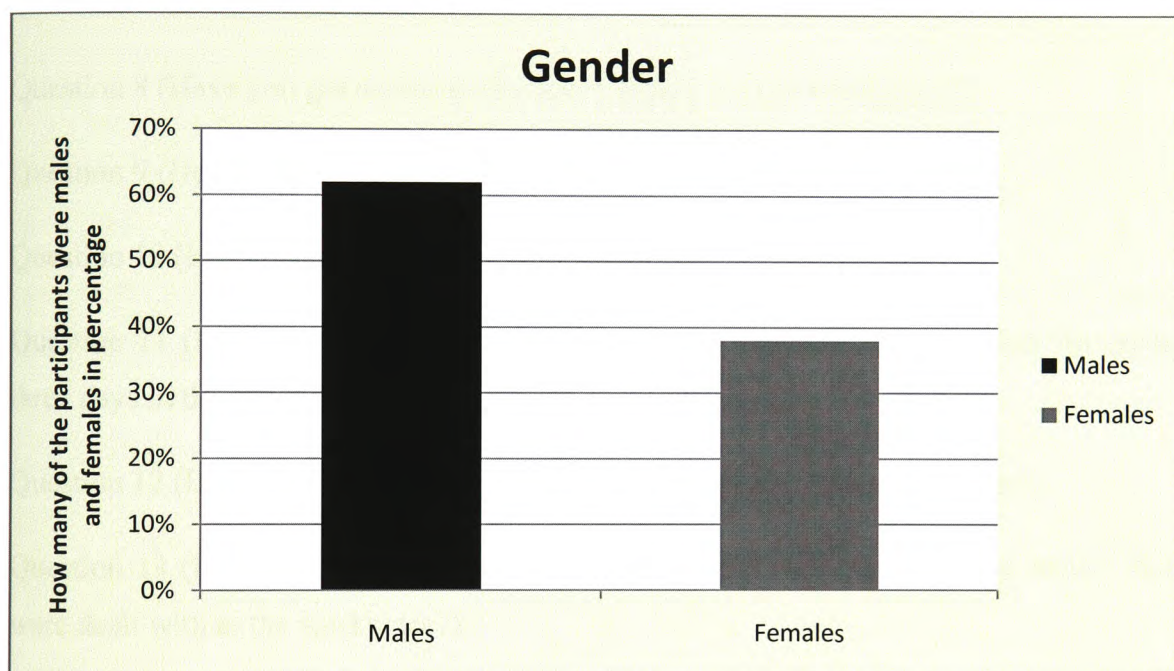
This shows the incidence of each type of employment and it can be clearly seen that standard employment represented by full-time permanent employees was the largest category, based on the number of the returned questionnaires.

Question 16 (Are you Male or Female?) was designed to show the relative proportions of male and female respondents who occupied the various employment categories. There might have been a connection with the type of employment chosen and possibly other implication connected with a preponderance of one gender or the other. For example, more women than men chose to work part-time in order to fulfil parental obligations as well as earning a living.

At the outset it was interesting to observe that the majority of respondents in the different employment categories were males. Of the 232 useable returned questionnaires 62% are Males and 38% are Females. The exception to this rule was the case of part-time employees, where the majority of respondents were females (57%). It should be borne in mind that this only covers both urban and rural areas in South Wales.

The National Employment figures from the Welsh Assembly Government (63% female and 71% male, June to August 2010) shows a significant difference which is reflected and accentuated in the data gathered in this study. The significant difference between male and female employment is a real one and the sharper contrast exhibited in this study might be the result of the lower female response to the study itself rather than lower employment of women in the designated areas.

Figure 6.4 Gender of respondents



This shows that the majority of participants in the questionnaire, 62% were males and female participants were around 38%. It would seem that in South Wales the men remain the principal bread-winners. Women who work part-time may do so if they are lone parents or supplementing the family income. Interviews confirmed this view.

CHAPTER SIX INVESTIGATION INTO WORKER EXPERIENCE HEALTH & SAFETY

The following questions were designed to ascertain the way in which the law operates (see Research Question 3, p. 3 above), e.g. whether health and safety law is observed by employers in the provision of required safety policy, risk assessment and safety equipment. These include:

Question 4 (What is your job, in terms of your main or only job?).

Question 5 (Did your initial training include safety procedures?).

Question 6 (Has there been follow-up/on-going safety training since that time?).

Question 7 (So far as you aware, has your job been subject to a risk assessment?).

Question 8 (Have you got access to the safety policy at your workplace?).

Question 9 (Does your work require the use of safety equipment by you?).

Question 10 (Has your work affected your health?).

Question 11 (Have you a had work-related accident that kept you off work for more than three days in the last 2 years?).

Question 12 (Did you report your accident and/or ill-health to your employer?).

Question 13 (Did you generally feel satisfied about the way your accident and/or ill-health were dealt with at the workplace?).

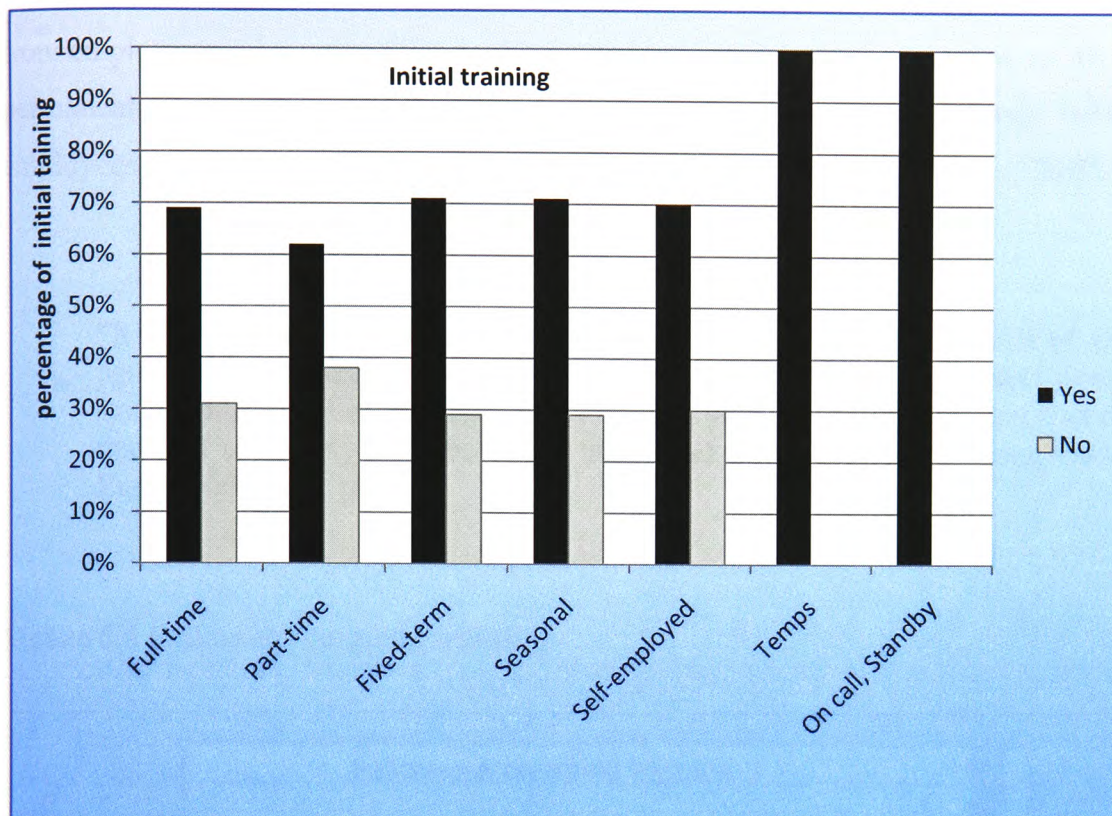
Question 14 (Did you seek advice to pursue legal action?).

Question 15 (Was the outcome of the legal action satisfactory to you?).

The data collected from all the questions above were examined and cross tabulated in relation to particular areas such as safety training (Questions 5 and 6), risk assessment (Question 7), health issues and accident (Questions 10 and 11), reporting accident and/or ill-health (Question 12) and seeking advice for legal action (Question 14). Having done the cross-tabulation for different questions from the questionnaire, a number of findings emerged. This included the extent to which employment status affects working conditions, particularly, health and safety of those at work and whether the initial training of participants includes safety procedures and if there has been follow-up/on-going training since then.

Other areas included safety policy at the workplace, being aware of risk assessment and whether the job requires the use of safety equipment. The following figures aim to show the outcome of the analysis of the questions that relate to the aforementioned areas which constitute important aspects of health and safety at work.

The figures below compare the incidence of initial safety training and follow-up/on-going training between the standard workers represented by full-time permanent employees and NSWs represented by part-time, fixed-term, seasonal or casual, temporary agency worker and on call/standby workers. Most respondents in both categories answered “Yes” to having received initial training which included safety procedures. So, in this respect at least they were equally provided for. This finding is compatible with the findings of the fifth European Working Conditions Survey by the EFILWC (2010), where it was found that training paid for by employers was at its highest level since 1995 (for the EU15), with 34% of workers receiving training in the 12 months prior to the survey. It was the follow-up/on-going training in which non-standard workers seemed to be at a disadvantage by comparison with their counterpart standard workers. This was obvious in the case of part-time employees where 55% of them answered “No” to question five about whether there had been follow-up training since their initial training. The same can be said with seasonal or casual workers, as more than half of them (57%) did not have any follow-up/on-going training.

Figure 6.5 Initial training

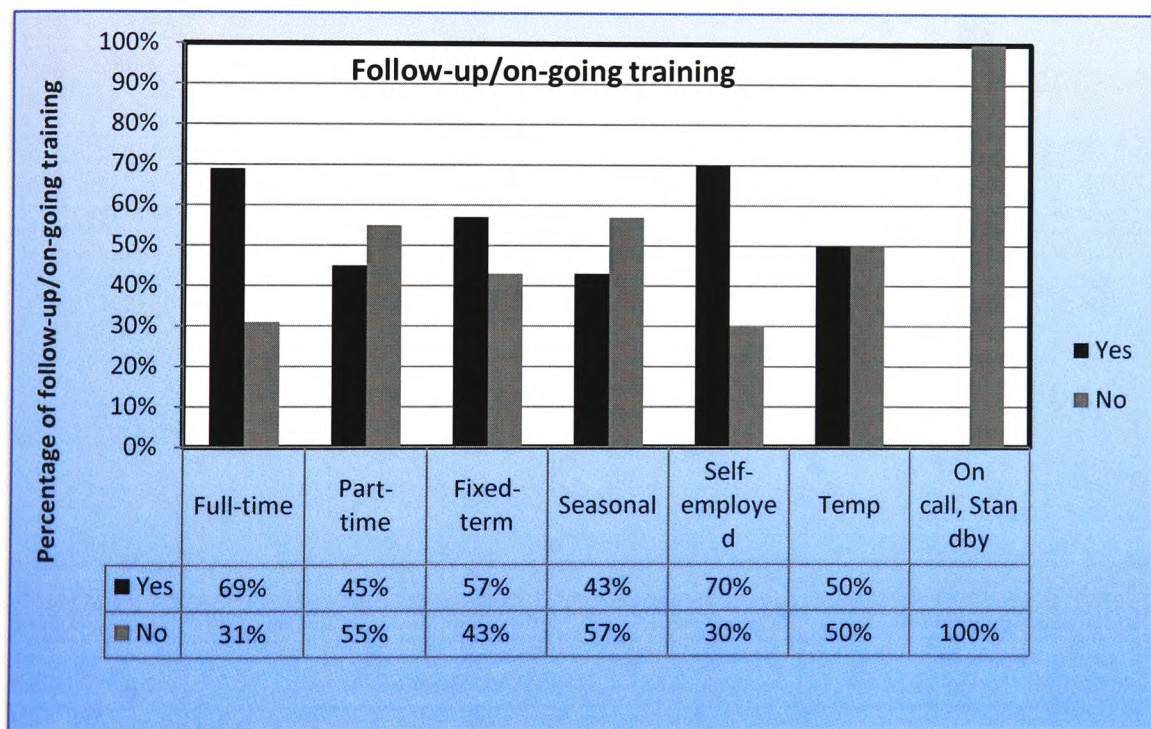
This shows that the initial training for most standard and non-standard workers included safety procedures. However, it must be borne in mind that respondent numbers were low in some cases.

Follow-up training is crucial for the safe and efficient continuation of work when either the equipment or the practice alters. The people who do the work need to be updated about the changes and helped to adapt to the new environment/equipment. For example, state enrolled nurses (SENs) have to complete a set amount private study on a bi-annual basis and also attend a specified number of study-days and undergo tests to ensure that their knowledge of their work is as full as it should be. Techniques and treatments change rapidly and frequently, so it is essential that (SENs) either part-time or full-time, are aware of changes and how to implement them effectively.

Failure in this regard could place either staff or patients at risk. In this context, the fifth European Working Conditions Survey found that permanent employees benefit much more from employer-paid training than do those employed on other arrangements: in 2010, 39% of permanent employees accessed employer-paid training, compared with only 26% of other employees (EFIWC: first findings from the fifth Working Conditions Survey, 2010. p. 4)

“It is clear from our findings that it is very important which kinds of contractual agreement you have with your employer...if you have a permanent contract, you stand a much greater chance of developing in your job, learn more and find challenges that will ultimately contribute to a better and more inspiring working environment” Eurofound (2010, p. 1).

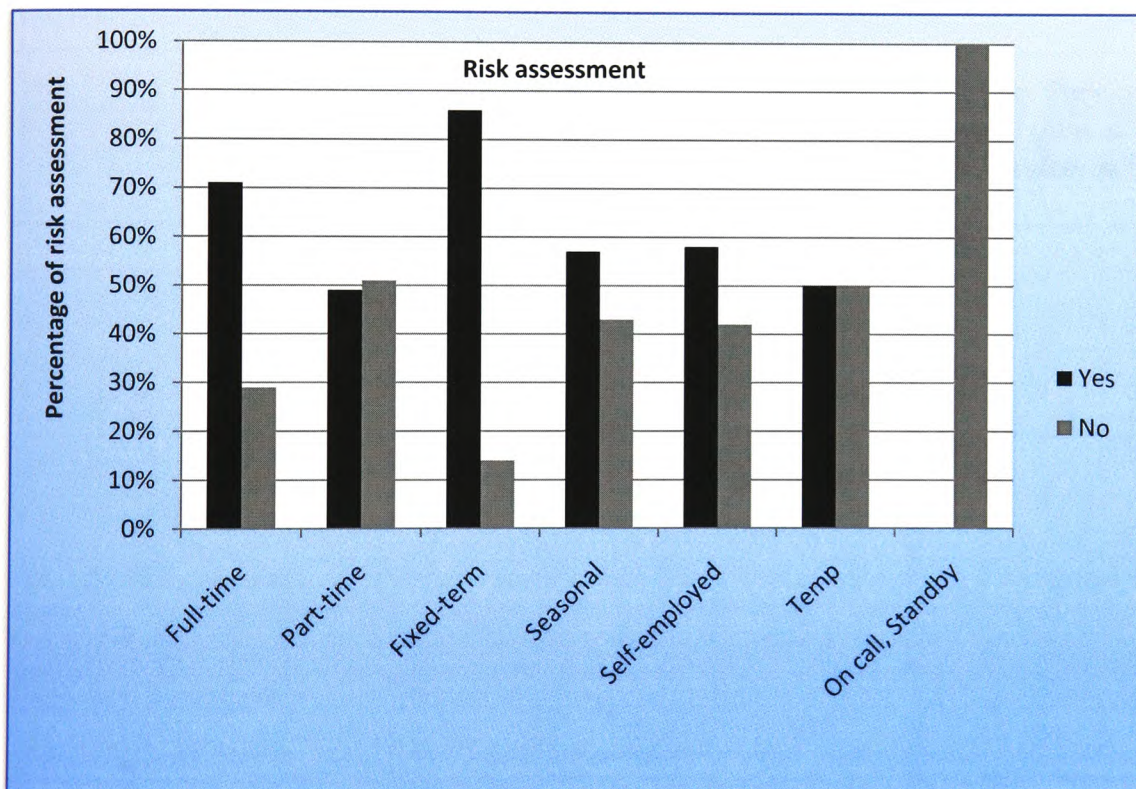
Figure 6.6 Follow-up/on-going training



This shows that in comparison with initial training, NSWs such as part-time, seasonal or casual, did not have follow-up training which made them miss out on any changes that took place at their work and in the work environment generally.

To understand further whether there is any correlation between the nature and the pattern of employment and the effects on health and safety, it was necessary to shed a light on each category in terms of the type of job and whether risk assessment, safety policy and the use of safety equipment is a feature of these occupations. The cross-tabulation between each type of employment category and a number of important aspects of working experience such as: risk assessment, safety policy and the use of safety equipment has proved to be interesting and useful. The chart below includes the frequency of those who answered “Yes” and “No” to question seven (risk assessment, safety policy (question eight) and safety equipment (question nine)).

Figure 6.7 Risk assessment



This shows how many of the participants were aware that their job was subject to risk assessment and those who were not aware of that. This shows that the majority of the employers fulfill their duties in this regard.

Part-time workers appear especially disadvantaged despite the fact that 60% of them, as figure 6.4 showed, have been in their current job for more than two years. It was found that standard and NSWs' responses were not excessively disparate, except for part-time employees and on call/ standby as these two groups seemed to be less aware that their jobs had been subject to a risk assessment. Risk assessment is a vital element in the strategy to prevent accident and ill-health to all those at work. This has been at the heart of most of the key health and safety legislation in the UK as has been discussed in Chapter 4 in this thesis. It is among the most important legal duties that health and safety law in the UK imposed on the employers. For example, Regulation three of the MHSWR 1999 states that:

“Every employer shall make a suitable and sufficient assessment of

(a) “the risk to the health and safety of his employees to which they are exposed whilst they are at work”

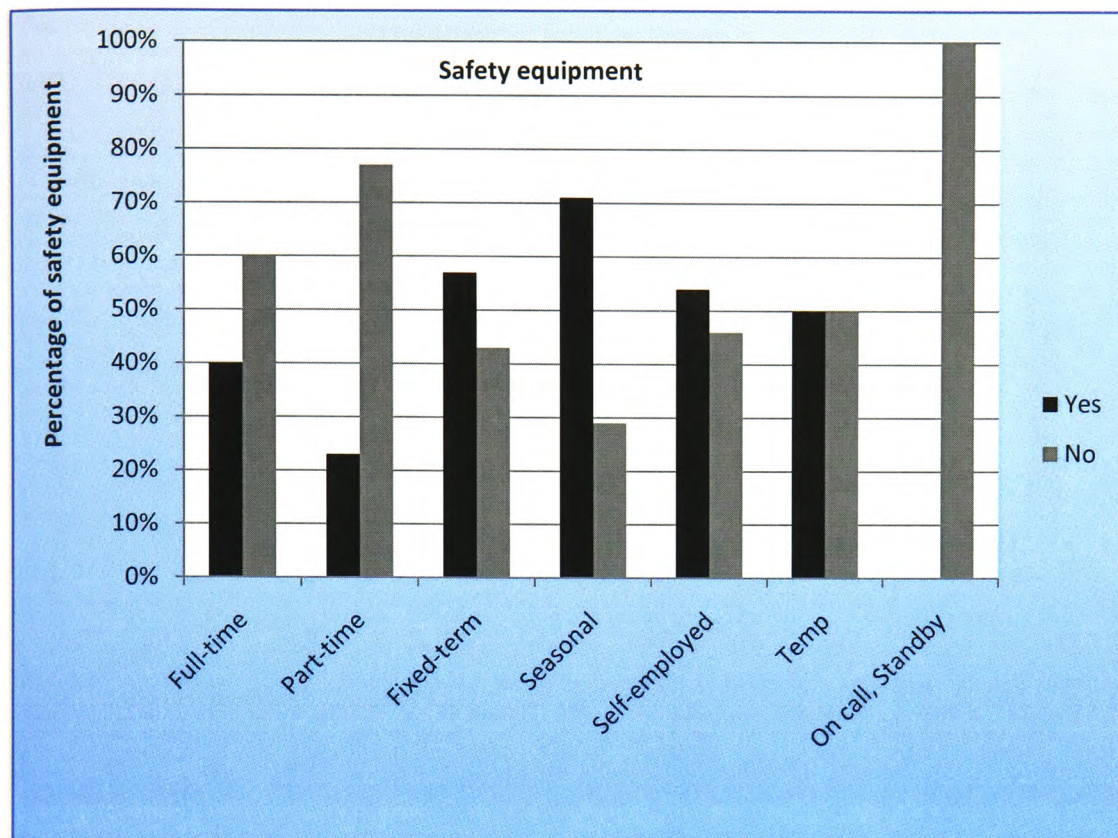
“Except in such cases as may be prescribed, it shall be the duty of every employer to prepare and as often as may be appropriate give a written statement of his general policy with respect to the health and safety at work to his employee.” (Section 2 (3) HSWA 1974).

Figure 6.8 Safety policy

This shows that most respondents' employers had provided satisfactory safety policies, in line with their legal duties under the HSWA 1974 and other relevant legislation. It should be noted that only one respondent fitted the on-call category.

The only exception where standard workers i.e. full-time permanent employees appeared to be surpassed by NSWs was when it came to the use of safety equipment, as many of them (60%) answered "No". This can be explained taking into consideration the nature of their occupations, as many full-time permanent employees are employed in white collar and managerial occupations where the use of safety equipment was not required.

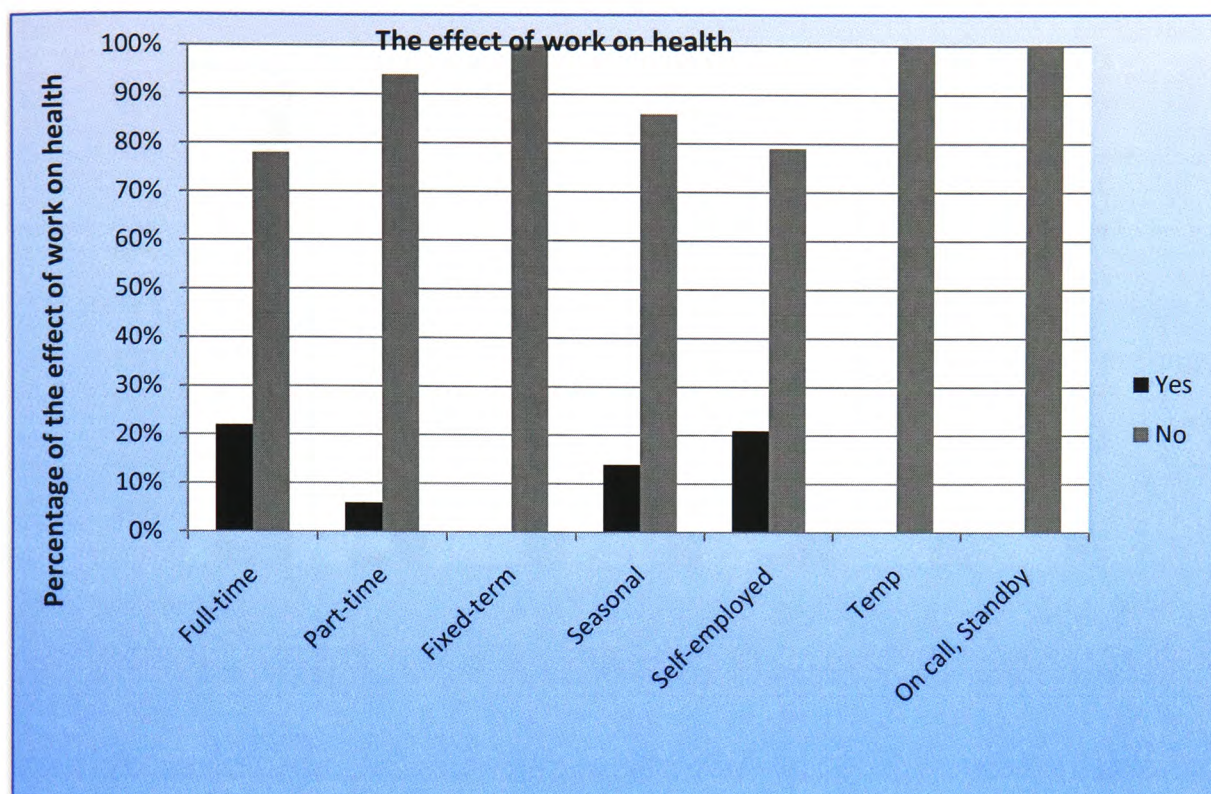
Figure 6.9 Safety equipment



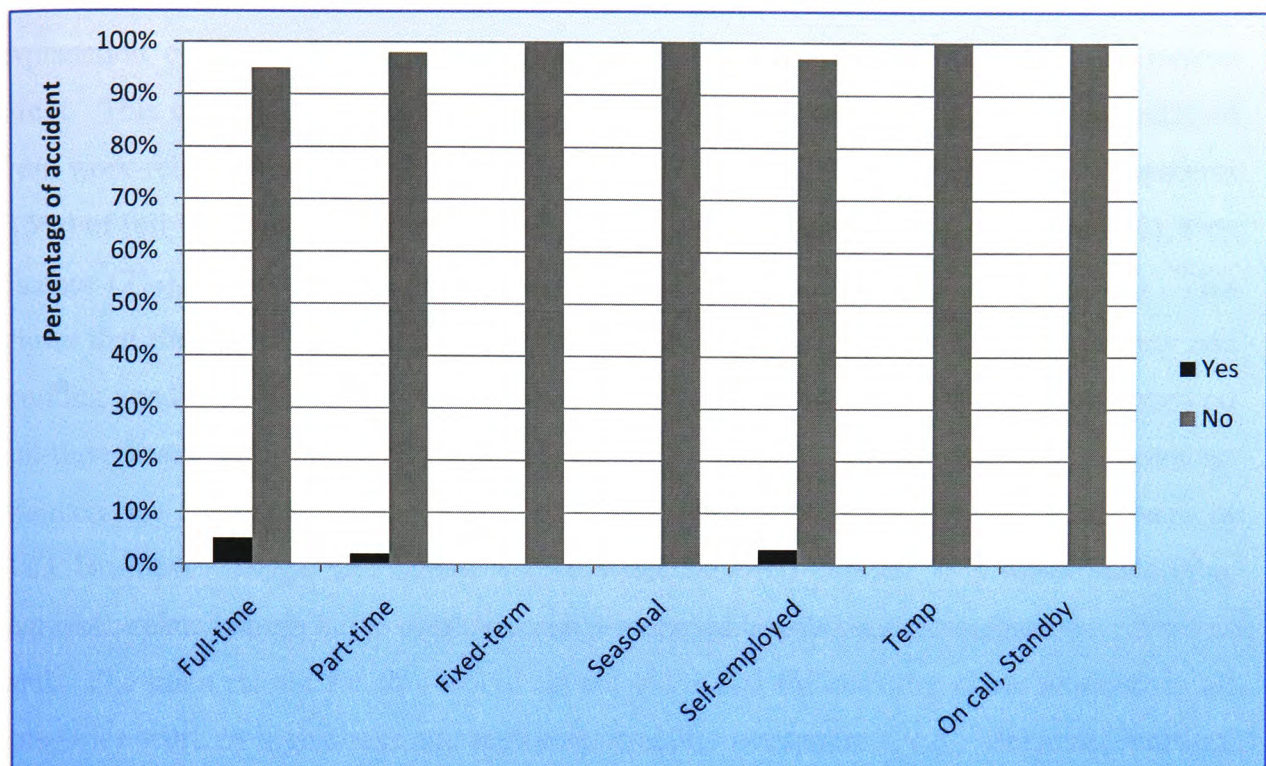
It is noted that the majority of full-time, part-time and on call/standby workers answered 'No' not because their employers breached their legal duties under the various health and safety legislation in the UK but because the nature of their job does not require the use of safety equipment.

In addition, the highest incidence of industrial accidents and work-related illness appeared in four categories i.e. full-time, part-time, seasonal and self-employed.

Figure 6.10 the effect of work on health



It can be seen that those in four categories of the given employment types in the questionnaire answered that their work has affected their health. It will be noted that the majority of these were in the NSW categories.

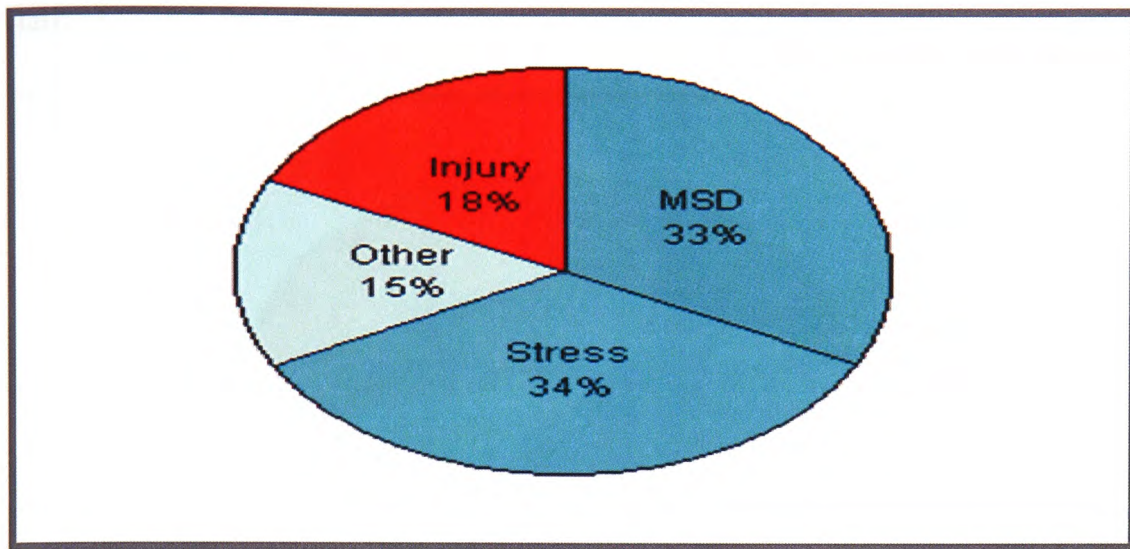
Figure 6.11 Accident at work

This shows that only three categories of workers, including full-time, part-time and self-employed, had accidents whereas Figure 6.10 showed more categories of workers who had suffered ill-health.

This conforms to the general statistics in the UK where cases of ill-health outnumber accidents and injuries. This, to a large degree, relates to the changing nature of occupations where heavy industries disappeared, giving way to service sectors with greater workloads and longer working hours. Stress-related ailments are now more common than physical injuries as a feature of the altered nature of most occupations. With the exception of full-time employment, some of the other categories contain unstable availability of work by their very nature, for example, seasonal/casual. Sometimes, as well, it is possible for contractors or self-employed people to experience fluctuation in the availability and stability of work. This causes stress which, it is reasonable to assume, may go some way to explaining the high incidence of work-related illness in these categories.

In addition, with reference to the experience of illness and health issues because of work, it was found that the vast majority of full-time participants (117) - .i.e., 80% who provided an explanation of the various types of work-related illness, had suffered from work-related stress. This can be explained by looking at the type of occupations of those who suffered from work-related stress. As shown above, they are usually found in managerial occupations (15%) of full-time employees, followed closely by 8% in Engineering, Commerce (8%), then Finance (7%), followed by Academic and School Teachers (7% each): Nursing (6%). This shows that the nature of work plays an essential part in occupational health and safety and working conditions generally. The majority of those men and women who are employed on full-time bases were either found in physically demanding occupations such as Nursing, Maintenance Charge-Hand and Farm Worker or with considerable responsibility, such as Bank Business Manager and Senior Human Resource (HR) Officer. It is worth mentioning that work-related stress is the most frequently recorded health issue throughout the NSWs as well. The main reason for this would appear to be that the majority of respondents in all categories work in high-stress and high-responsibility occupations, e.g., Medicine, Nursing, Teaching, and Social Work. This finding is reflected in the latest Health and Safety Executive, Health and Safety in HSE, Annual Report 2009-2010. In the same report, concern was expressed about the magnitude of the problem of stress-related illness. It was earmarked as a targeted aim to reduce the incidence of such a prevalent and all-pervading ailment which seems to cause the greatest loss of working days.

Figure 6.12 general statistics: days lost due to ill-health



Comparison of days lost due to work-related ill health (Stress, Musculoskeletal Disorders MSD) and other illnesses and injury - 2009/10.

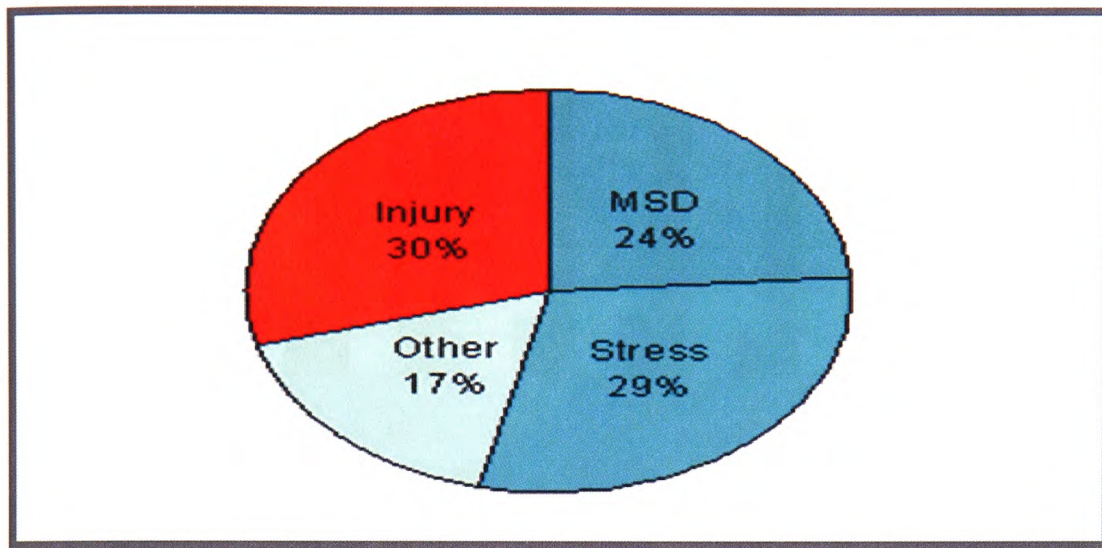
Source: HSE-Statistics 2009/2010 based on Labour Force Survey (LFS).

Estimates from the Labour Force Survey show that there were 23.4 million working days lost in 2009/10 as a result of work-related ill health:

- Stress, depression or anxiety - 9.8 million
- Musculoskeletal disorders - 9.3 million
- Other illnesses - 4.3 million

An estimated 5.1 million working days were lost due to workplace injuries. According to the aforementioned statistics presented by HSE and LFS, ill-health accounted for 82% of the days lost due to work-related ill health and injury in 2009/10.

Figure 6.13 general statistics: work-related incidents of ill-health and injury 2009-10



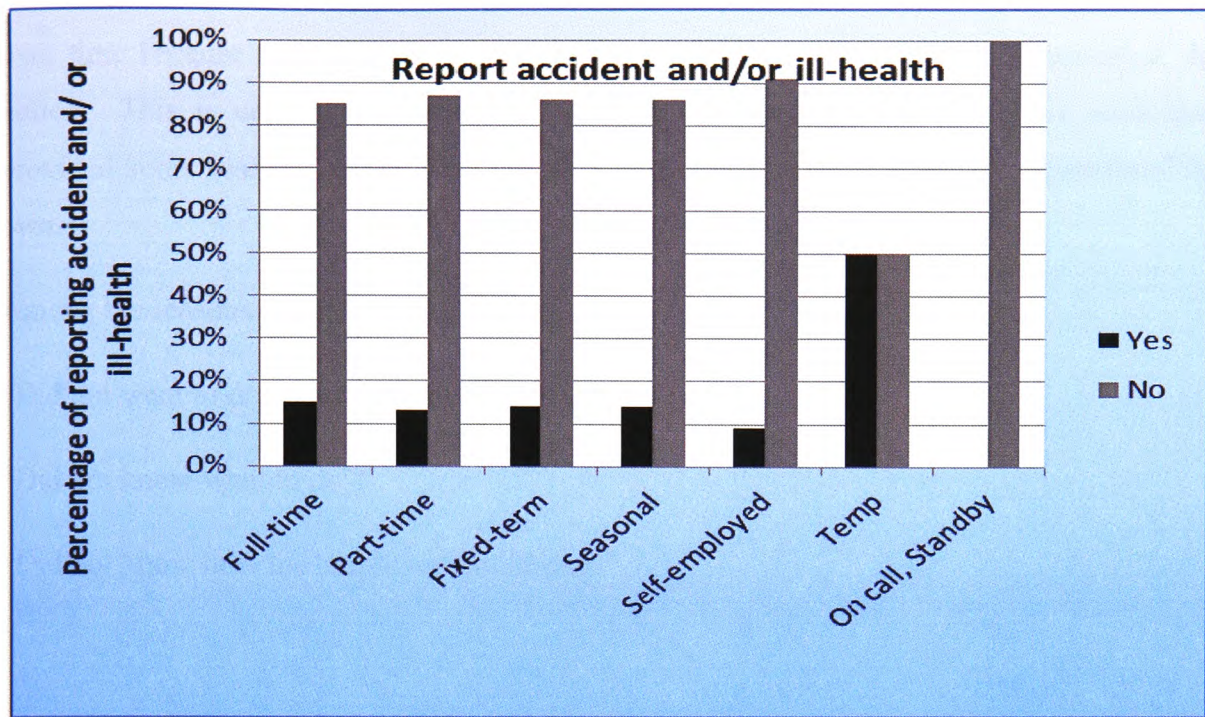
Source: HSE-statistics 2009/10 based on LFS.

Estimates from the Labour Force Survey show that there were 555- 000 new cases of work-related ill health in 2009/10:

- Stress, depression or anxiety – 234, 000 cases;
- Musculoskeletal disorders – 188, 000 cases;
- Other illnesses – 133, 000 cases.
-

The estimated number of injuries at work in 2009/10 which met the criteria to be reportable under the Report of Injuries, Diseases and Dangerous Occurrence Regulations 1995 (hereafter RIDDOR) was 233, 000. Ill health accounted for 70% of the health and safety incidents which occurred in 2009/10. Stress is also raises concern at the European level by the different European Institutes. According to OSHA (2011, p.1) one in four workers are affected by work-related stress in the European Union.

Figure 6.14 reporting accidents and ill-health



This refers to a significant issue where most of the respondents did not report their accident and/or ill-health. This is critical since those in four categories who suffered from accident and/or ill-health did not report that to their employers either because they were afraid to lose their job or they were not sure about their employers' reaction.

One intriguing feature of cross-tabulation was the discrepancy between the experience of accidents and illness against the frequency of reporting compliance of this nature. While there proved to be significant incidences of work-related illness in four of the given categories, and industrial accidents in three categories as explained earlier, the incidence of reporting such experiences was low. Only two categories contained evidence of reporting any complaint even though there were adverse experiences recorded in four of eight categories. Even with serious accidents and/or ill-health, where workers had to take time off for considerable periods, many of them did not report to their employer and did not seek advice to pursue legal action. An explanation of the high number of those who did not report their accident and/or ill-health to their employer was fear and uncertainty about the way their reports might be received.

Some participants provided some reasons either from the ones given in the questionnaire or other reasons. NSWs are particularly at risk from neglected problems which might intensify over time because some, at least, have no right to sick-pay and may be dismissed at short notice. This is certainly the case for seasonal and casual workers. Some participants provided some reasons, either from the ones given in the questionnaire, or reasons of their own.

Among the reasons given were:

“Did not want to draw attention to myself”;

“Did not know what to do”;

“Did not know how the employer would react”.

These three different reasons were the main justifications from the four categories which witnessed high incidences of accident and ill-health i.e. full-time, part-time, self-employed and temporary agency workers. Some participants who reported their accidents and/or ill-health either were not generally satisfied with the way their employers dealt with their accidents and/ or ill-health; or they had to leave after their accidents or-ill-health, because of the way their employers treated them. For example, Mrs A of Cardiff who works as a Senior Human Resources (HR) Officer, suffered from depression and had to leave her job for 3 months as a result of that. Although she reported her health issue to her employer she was not satisfied with the way he dealt with it. However, she did not seek advice for legal action as she “did not want to draw attention to herself”. The same can be said with Mrs C of Carmarthen who works as a Nurse and suffered severe back pain; although she reported her health issue to her employer and was not satisfied with the way her employer dealt with that, she did not seek advice to pursue legal action as she “did not know how the employer would react”. These and other examples from the empirical research highlight the reasons that might stop many workers who suffered accidents and/or ill-health from pursuing advice for legal action or even report their experiences to their employers. This, to some extent, may help to explain the lack of sufficient statistics on the rate of accidents and ill-health because of work in the UK, as have been discussed in other Chapters of this thesis.

As well as investigating some important aspects at work which can reflect the quality of job in terms of health and safety, this research also aims to consider the consequences when accidents and ill-health occurred. Therefore, it was important to consider whether workers tended to claim compensation following their accidents and/or ill-health.

6.3.1.7 Compensation and Liability Issues

Having analysed both qualitative and quantitative results, it was seen that in most of the cases where workers either from standard or non-standard groups had suffered an accident and/or ill-health, only a few of them claimed compensation. This may provide some sort of explanation for the low number of personal injury claims as well as the number of claims for compensation from either the employer or the state as the majority of those who suffered accidents and/or ill-health did not bother to seek advice to pursue legal action in the first place. According to the TUC (Personal Injury Claims: Proposals for Change, 2006, p.2) 850,000 people are injured or made ill as a result of their job and over 25,000 people are forced to give up work every year as a result of a work-related injury or illness. Of these only 10% will actually get any form of compensation from either their employer or from the State. This fuels the continuing demand by many interested parties in the UK, proposing changes in the Employers' Liability Market (hereafter ELM) (Great Britain: Department for Work and Pensions (hereafter DWP) (2012). For example, the TUC (2006, P.7) claimed that in reality Britain pays out much less in civil compensation than many other countries. In fact, according to the TUC (March 2006, p.2) the number of claims for compensation from employers as a result of accidents, have fallen every year, and the total costs of compensation cases in the UK has remained, in real terms, static since 1989.

This also leads us to consider the concept of liability for personal injury in the UK. It has long been argued that personal injury cases and many other civil compensation cases are far more often in dispute. Since liability is not admitted until the final stages of a case, unnecessary evidence is collected to prove negligence, at the same time, medical evidence is collected and even disputed. This leads to lengthy delays and a great increase in the proportion of costs in personal injury cases. This has a crucial impact on the efficacy of the application of health and safety law in practice.

It has, particularly, a link to the level of protection provided by the vast number of legislation in the UK which provides some forms of private remedy in the form of compensation. In this context, the Association of British Insurance (hereafter ABI) estimates that the average employer's liability claim takes an average of 1,000 days to get compensation to the claimant. Moreover, the compensation payments are based on compensating the actual loss and even where there is debilitating and life destroying disease, the compensation is never more than that outlined in the guidance that is given to judges. Some might argue that the problem is not with the actual compensation system but with the way in which procedures are abused or ignored. Those who are NSWs more likely to come to grief when faced with work-related health problems because, as was already pointed out, they feel less confident about complaining to employers, for fear of reprisals such as dismissal or other forms of psychological pressure. The number of prosecutions by the HSE and Local Authorities is also relatively low, falling from a high of around 2,500 in 1999 to around 1,400 in 2008-09. There were 41,496 health and safety inspections in 2006-07 (down from over 65,000 in 2002-2003) which evidence suggests a connection with the average workplace covered by the HSE being inspected just once every 14.5 years (Great Britain: Health and Safety at Work 2010).

Uncertainty about legal requirements such as 'reasonable practicability' and health and safety guidance on when a risk assessment needs to be made, or how extensive it needs to be, all adds to the difficulty of pursuing legal action. The big question here is whether all risks should be eliminated, or whether they should be managed efficiently. At some point, the marginal cost of risk mitigation will exceed the marginal benefit of fewer injuries. Therefore, the main thing is that it is significant to make explicit where health and safety lies in the order of priorities. Recognizing that the nature of work and its attendant risks constantly change, some consideration should be given concerning the implications for designing legislation. Real risk as a basis for legislation may seem, at first glance, an eminently sensible idea. However, if in practice, assessing all claims on this basis results in rendering the protective aspect of the law impotent for injured employees, perhaps this should be re-examined. The concept of real risk seems to require re-definition in order to protect employees for whom, after all, health and safety legislation is supposedly designed.

Critics may argue that attempts to cover every conceivable form of risk would result in descent into a labyrinthine complexity of measurers, serving to confuse rather than protect. This would be an extreme argument. A balance needs to be struck between effective law with effective sanctions and the sort of free-for-all arrangement which would have claims-courts back-logged with unjust, dishonest and fatuous attempts to claim compensation on the slenderest of grounds.

6.3.2 Qualitative Research (Semi-structured Interviews)

In order to augment the information provided by the questionnaire and obtain a clear picture of working people's experience of the law, semi-structured interviews were used. These provided more fine detail and compensated for the fact that the veracity of questionnaire response can be difficult, if not impossible to check. It was decided that questionnaire respondents would be offered a choice between face-to-face or telephone interviews. In order to reflect all pertinent aspects of the relevant experiences, a questionnaire would have had to be of daunting magnitude, lessening the likelihood of receiving any responses at all. These methods are likely to make interviewees relax enough to provide richly detailed responses.

“Qualitative interviewing tends to be flexible, responding to the direction in which interviewees take the interview and perhaps adjusting the emphases in the research...in qualitative interviewing, the researcher wants rich, detailed answers.”
Bryman (2008, p. 320)

Personal contact, paying direct attention to the person whose experience you wish to examine, inspires confidence and increases the chance of getting honest and sufficiently detailed information for the research's purpose. The aim of the interviews was to explore the extent to which NSWs are more vulnerable and at greater risk than standard workers. Thus, a group of NSWs from the Questionnaire, who provided their contact details, was selected including part-time and self-employed workers. Additionally, in order sufficiently to assess the reality of NSW and how it might affect those involved, it was considered pertinent to interview workers who were employed in full-time permanent jobs.

CHAPTER SIX INVESTIGATION INTO WORKER EXPERIENCE HEALTH & SAFETY

The access to interviewees was considered with regard to geographical and time constraints. In the case of interviewing workers both Standards and NSWs, there was no logical reason to deviate from the chosen geographical areas covered by the questionnaire, when arranging the interviews. The chosen interviewees were thus from respondents within the boundaries of Wales .i.e. Cardiff, Pembrokeshire and Carmarthen. In addition, the samples for the interviews include others who were not connected with the questionnaire. This particularly; applied to the case of interviewing key individuals where it was realized that interviews would not be confined only to the previously mentioned geographical areas. With the key individuals, the intention was to get in touch with a variety of them from Local Authorities, Unions, Environmental Health and Safety Agency, lawyers and directors. The aim of interviewing key individuals was to identify the key practical issues and challenges for the law, to provide a clearer picture of how the law works in practice and how those responsible for its execution meet the aims and objectives of health and safety law. Twenty-eight interviews were conducted, which combined face-to-face and over the telephone interviews.

Of this number, twenty interviews were with workers who provided their contact details in the returned questionnaires, eight of the interviews were undertaken with key individuals-.e.g. company directors, lawyers and line managers. At the outset of either face-to-face or telephone interviews, interviewees were assured that they did not need to discuss any topics which might distress them and they could terminate the interview at any point if they were not comfortable. The interviewees' identity and personal details were kept confidential and protected. In addition, the entire outcome of the interviews was securely protected and only used for the purpose of this research. This was the main concern for most potential interviewees: confidentiality. In a similar way, participants (workers) were assured that no information would be passed to their employers which might cause them to be victimized at their workplace. In the face-to-face situations, interviewees were given the choice of location for the interview, and were offered alternatives (public/private). Interviewees' consent was sought for any recorded contribution in written form or on tape. Interviewees gave their consent in writing and if this was not possible, an explanation was given.

Where respondents preferred to be interviewed over the phone, they were only called at times which they indicated in the returned questionnaires and if they did not specify times to be called, they were contacted to find out when would be suitable to have the interview. In the case of telephone interviews, the office number was used unless participants preferred to be called in the evening. Before each interview the interviewee's responses in the returned questionnaire were checked for issues which could be further discussed in the interview, along with a number of other questions. In-depth semi-structured interviews were used to investigate more closely the factors which might affect the working conditions of workers. This proved to be an effective method to illuminate the research questions. Formulation of interview questions or topics was chosen in order to cover the areas relating to the main focus of the research but from the perspective of the interviewees. Within this relatively free framework certain themes were introduced by the interviewer. These included the interviewee's self-definition of their current job. A further theme was the motivation and the circumstances which made interviewees choose their current job. The theme of the relationship between safety training, awareness of risk assessment and other aspects of health and safety were also explored, as the interviews developed.

6.3.2.1 Details of Interviews

With the exception of five face-to-face interviews, all other interviews were by telephone, at times convenient to the interviewees. Face-to-face interviews were desirable for reasons previously stated. However, there was a limitation in relation to the interviews due to a number of elements including that of the cost of travel to various areas but above all it was the desire of most interviewees to have telephone interviews. Each interview lasted, on average, forty-five minutes to an hour. Save for one interview, interviewees in both types of interviews were friendly and happy to talk to the interviewer. Indeed the experience of interviewing proved to be enjoyable and productive as it opened up possibilities to finding so much more about the aims of the study. All face-to-face interviews were tape-recorded on a simple, small tape recording machine which did not require any complicated set-up procedures and some notes were taken simultaneously. The tapes and transcriptions were kept in a secure place.

Additionally, all face-to-face interviews, save one, were conducted at the place of work of the interviewees and at such venues as requested by the interviewee. In all cases the interviews were conducted in a private room with closed doors and employers and work colleagues out of earshot. Body language was observed closely during face-to-face interviews so as to notice the person's reactions to the questions and topics highlighted during the interviews.

6.3.2.2 Analysis of Interviews

Since the research intends to shed a light on a specific facet of a very wide topic, it was necessary in the fieldwork, particularly the interviews, to provide a detailed analysis of practical aspects of health and safety from the standpoint of employers and workers in as well as some key individuals, including those directly involved in the implementation of health and safety regulations in the workplace and policy-makers at EU level. The analysis of the semi-structured interviews revealed a number of important themes which are of relevance to the overall aim of the research and which can be loosely categorized as follows:

- Participants' decisions about working patterns;
- The impact of work;
- Health and safety law in practice, including European legislation in the area of health and safety - views - of Respondents.

6.3.2.2.1 Participants' Decisions about Working Patterns

The analysis of the semi-structured interviews not only confirmed the finding of the questionnaire that part-time employment was one of the main categories of NSW, predominately occupied by females; it also highlighted the reasons for them to take such jobs. The main reason for making the decision to work this way was usually in order to combine family responsibility with being in paid employment. This was the case with Mrs. S, Nursery Nurse from Pembrokeshire who decided to leave her full-time permanent employment to work part-time. She preferred to work part-time because she finds it better in terms of balancing her work with family demands.

Mrs F from Cardiff also preferred working part-time, as it makes it easier to manage her home life and her job. Additionally, some other interviewees gave similar reasons for their decisions to work in another type of NSW. For example, Mr M from Pembrokeshire has recently been working as self-employed and he runs his own training company, before that he worked as a full-time employee. The interviewee seemed to enjoy working more flexibly and having more control over his job. This shows that the decision to work in the various patterns of NSW is made, in many cases, voluntarily.

6.3.2.2.2 The Impact of Work

Work is still seen as a fundamental element in individuals' lives. For example, one seasonal worker who just has been in his current job for less than six months commented that: "Going back to work has improved my health beyond what I could ever have thought possible". Based on the response from respondents in the questionnaire as well as from the number of interviews conducted with some of them, different reasons can be cited for their decisions to work in the different categories of employment. In the case of part-time workers, the main reason was the flexibility and the ability to combine work with family responsibility. The nature of the occupations of those who chose to work part-time varies according to their skills and qualifications. The main difference between part-time and full-time employees is the number of hours that are worked each week. Although most part-time employees usually worked fewer hours, still their health can be affected because their work-loads might be high and it entails a lot of physical and emotional pressure; such is the case with most part-time Nurses, either at hospitals or in care homes. This is to say, it is difficult to generalize the health issues for part-time employees because this depends not only on the number of hours they work but also on the nature of their occupations. For example, Mrs. E, a part-time nurse from Cardiff: she only worked twenty hours a week and she enjoyed her work but work-breaks were not taken because nurses were too busy with high work-load. This resulted in hazardous fatigue. The interviewee forgets part of the homeward journey because she is exhausted by the time she gets into the car. Mrs P from Cardiff works as a part-time Teaching Assistant, teaching English to asylum seekers. At the time when the interview took place she was off work because of depression, for three weeks. She believed her work had to some extent contributed to her ill-health.

Because she was working at more than one school, she travelled a lot and for this she used public transport as she did not drive. This added to the load of stress and affected her general working conditions. Standard workers could also have a number of negative experiences at work which generally affected their working conditions. Mrs P from Pembrokeshire was bullied and sexually harassed at work by her colleagues. Following that she had two weeks off work. Some of them also suffered from some health problems such as Mr M from Cardiff who suffered from Stress, Computer strain on eye sight and neck. Full-time Female employee, Mrs E works as Sales Assistant. The interviewee has had two accidents at work. She thought these two accidents had been due to lack of responsibility on the part of the management who did not take proper steps, especially after her first accident. She sought legal action based on the employer's and management's failure to take reasonable care and being responsible. For interviewees who were self-employed, there were financial challenges. Many of them felt they were not sufficient financially secure, as employers, to offer sick pay enough as employers to offer sick pay to those who work for them, but in the event of an industrial accident, they would still have had to follow procedures and would be liable. In the U.K. Self-employment is prevalent in particular industries and professions such as Construction, Information Technology and the Legal Profession. As many of the self-employed were found in small businesses, it seemed harder for them to cope on their own, so subsidies are vital for many. For example, care homes, such as the one owned by Mrs A from Cardiff, need financial support because care in these establishments is very expensive and most of the residents could not afford to pay full fees. This demonstrates that the concept of vulnerability is a broad one, not confined to physical risk but encompassing economic instability and psychological wear-and-tear.

6.3.2.2.3 Health and Safety Law in Practice Including European

Legislation in the Area of Health and Safety - views of Respondents

Although many interviewees believed that there had been enormous improvements in health and safety at work, over the past thirty years, there appeared to be a concern about being over-loaded, as many regulations and much legislation had been in place for people, such as the management, to take on board. Furthermore, thirty years ago the requirements were simple and straightforward, but nowadays legislation and regulations are more complex and varied.

CHAPTER SIX INVESTIGATION INTO WORKER EXPERIENCE HEALTH & SAFETY

Therefore, it is important, as part of enforcing the law, to keep up with all the changes both in the nature of work and legislation. This, at the same time requires a huge amount of effort and hard work from the enforcing authorities, including Health and Safety Executive (HSE) and Local Authorities. Their regulatory and inspection functions are significant but there are still issues regarding the shortage of money and staff to ensure that they are capable of carrying out their tasks. This was brought up during a number of interviews, particularly with some key individuals. For example, Mr. A (Deputy Health and Safety Officer) hailed the development in health and safety at work generally but would welcome further improvement in terms of staff and resources. The Unit where he works carries out its job through a process of conducting questionnaires, providing written guidance and protocols and check-visits. This seems to involve a large amount of work; there is a need to have more staff in the Unit.

In addition, some key individuals such as Mr M the Health and Safety Advisor in one of the major heavy industries, who is responsible for enforcing health and safety law, emphasised that there are no practical problems in enforcing the law for someone who is competent, although it can be difficult to keep up with legislative changes all the time. Mr M. was asked whether he thought, as some do, that there is too much legislation in place. In this context, Mr D made a good point: “As there is too much legislation in place for people to take on board so it is important for management to keep up with that”. This matter was further highlighted in the interview with Mr D, a Strategic Planning and Environment Officer with a Local Authority who stressed that inspection was an important part of his job but it was getting more difficult. He also added that: “Things happened between now and 1974; the needs changed over the years, the requirements were so simple and straightforward then Nowadays, legislation and regulations are more - “diverse and varied”. Since most of the U.K. modern health and safety law originated from the European Union, it was necessary for the purpose of this research to investigate the implications of European law and its extent (Chapter 4 above dealt extensively with EU law). In addition, for the purpose of the empirical research, a study-trip took place, to Brussels. This followed an earlier arrangement in order to interview some of those involved in the process of law and policy-making at the European level. An expert in health and safety in the European Trade Union was interviewed and he provided important comments on European health and safety law. Mr L emphasized that:

“Although the E.U., law has stronger rules; it also has weaker implementation, for example, the Framework Directive of 1989 which is one of the major directives from the EU. In principle, its rights cover everyone: standard and non-standard but it does not define a concrete mechanism to implement those rights. The directive is too general when it comes to some important areas which significantly affect NSWs. For example, for temporary agency workers, there is still no specific risk assessment; it is only a template.”

Although this might not be a new argument in the realm of Health and Safety Law, it highlights a long-standing issue with the law in practice, which to some extent an effect on those has employed in the different forms of non-standard work arrangements.

6.4 Conclusion

Having conducted the fieldwork, both qualitative and quantitative, some interesting outcomes have been noticed, subject to the limiting conditions of the research. These limitations include the fact that the sample, although sizeable, is not enormous and the questionnaire only covered particular designated areas in South Wales and was sent at different time points. A considerable number of respondents who suffered accidents and/or ill-health provided their contact details in the returned questionnaire but either did not respond when contacted or claimed to have changed their minds about being interviewed. Others who reported accidents or ill-health in the questionnaire did not leave any contact details. This revealed a disadvantage with the method: the potential for wasting what might have been fruitful opportunities. If more information could have been gathered concerning the experience of accidents and/or ill-health at work, then a clearer picture might have emerged. Another area of interest, as far as the health and safety of workers is concerned, was the low incidence of reporting accident and/ or ill-health among NSWs who suffered at work. In contrast, full-time permanent employees who suffered accidents and/ or ill-health because of their work were willing to report this to their employer. The findings of this study go at least some way to demonstrating the changing nature of work in modern society.

Whereas in years gone by, the main hazards for working people constituted physical danger, it would appear that in the modern workplace the vulnerability of those who are employed has more to do with psychological vulnerability than with physical risk. It was found during the course of the study that the most common threat was stress-related malady. This confirms that the concept of vulnerability is a broad one, not confined to physical risk but encompassing psychological stress and economic instability. The research illustrates this well, showing that the reduced security of NSW employment may be more injurious to workers' health than raw physical risk. The results do not illustrate a specific vulnerability to accidents among NSWs, yet they reveal a more complex picture of intricate connections between the less secure conditions of much NSW employment and stress-related illness.

The thesis has shown that the significant changes which have taken place in the world of work bring new challenges with regard to workers' health and safety that are different from those usually associated with work. These include risks that are linked to the way work is designed, organized and managed, as well as to the economic and social context of work, resulting in an increased level of stress and leading to serious deterioration of mental and physical health. For example, one interviewee who works as self-employed believes that the self-employed are more vulnerable. He chose to work this way to have his own business which gives him more control over the way he runs his company. However, he has to employ other people as sub-contractors to do work for his clients. Having those people working for him brings new challenges in regard to the way those people are managed and protected. This shows the possible links between subcontracting and worse working conditions which many argue is a major cause of fatal accidents, particularly in the building industry (Artazcoz, Cortes and Borrell, 2011; Leightom et al 2007).

CHAPTER SEVEN

Conclusion

As explained earlier in (Chapter 6) the main hypothesis of the research was based on the assumption that NSW by its very nature may put those employed in its various patterns at more risk than standard workers. This hypothesis was based on the reasons why NSWs might be more vulnerable and exposed to risk than their counterpart standard workers. These reasons were categorised as legal and practical. The legal reasons were established as the legal status of NSWs and how they might be found at a disadvantage because of their uncertain employment status. The thesis attempted to demonstrate that the case of NSWs raised an important question about the law's efficiency. This relates to the practical issue concerning the law's application in the workplace.

“Workers without employee status in general are also among the most vulnerable ... Those workers who move between unpaid work (primarily within home and family) and paid employment-predominantly women-are particularly vulnerable, since they are more likely to have ‘non-standard jobs (temporary, casual, fixed-term), which the courts judge as outside the contracts of employment and hence employment protection.” Fredman (2004, p.300)

“There are many and complex reasons for vulnerable work. Much exploitative treatment of vulnerable workers occurs because the law is not strong enough to prevent mistreatment, with employers using gaps in employment protection to treat staff badly. The result is extreme insecurity for workers who do not have contract of employment.” Great Britain. TUC (2008, p. 3)

Although the results of the empirical work did not demonstrate the entire interrelation of NSW and the negative effect on the health of those involved, the findings, on the other hand, revealed some unexpected features.

7.1 Theoretical Analysis of Health and Safety Law

With more health and safety legislation in force, health and safety issues are still unresolved which makes the debate about the role and function of aspects of law in modern societies continue (Lofstedt's Review, 2011). The research for this thesis was concerned with one particular area of law which relates to health and safety in regard NSW. This issue remains in question when we consider the increasing concerns about health and safety in the workplace in the UK. For instance, large corporations may be tempted to expend more effort in considering ways of avoiding responsibility in the event of major industrial accidents than in planning strategies to minimize the possibility that such disasters will occur in the first place.

“Too often health and safety are words used as excuses by organisations that have not developed their thinking in this area.” Rose (The Times, Monday 29th October 2007, p11)

Individuals are the key elements of the employment relationship which has undergone considerable changes, particularly, in the contemporary workplace. Therefore, it was realized that in order for the research to assess significantly and examine the impact of health and safety legislation, the origins, philosophies and concepts that underpin the UK health and safety law should also be considered. Therefore, it was crucial to examine how the changes in the attitude, culture and the structure of the economy have all had a marked impact on the operation of law. It was also significant to evaluate the different aspects of health and safety law that provide additional or different protections, particularly, in the case of NSWs. In this context, a recurring question was raised about how well employers comply with their general duties under the HSWA 1974 and under other regulations to ensure the health (including mental health), safety and welfare at work of all their workers. It can be said that conditions for UK workers have improved greatly over the last three decades. The effectiveness of legal interventions aimed at the prevention of injuries and illnesses and health promotion for NSWs, contributes significantly to the sharpening of awareness concerning fresh developments in the comprehension of health and safety in general.

In this regard, labour market policies have an important role, as an adequate protection and prevention system are key elements in ensuring better working and employment conditions. This is so, taking into consideration the nature of risk assessment and any additional focus which should be geared to those who might be at special risk.

7.1.1. Health and Safety Law in Relation to Theories Examined in This Study

In Chapter 1, it was shown that health and safety law has been subject to much theoretical analysis through a number of theories which proved to be applicable to some important areas of this study. Among these theories are 'Regulation Theory', 'Risk Theory' and 'Legal Theory' which seem more relevant and potent than other theories in their attempts to provide an appropriate theoretical approach for the thesis. The aim of considering these theories was not to provide a detailed explanation of the same but rather to highlight the way in which these theories can be used in this research, with a view to devising a theoretical model. Regulation Theory aided comprehension of the development of the UK health and safety law in its historic and socio-economic contexts because it acknowledges the interaction of many elements in human society. Regulation Theory helped to guide the design of the theoretical model which accommodated the complexity of the topic. Risk Theory helped with understanding the interplay of positive and negative features in today's workplace. As material wealth increases, so does the sense of insecurity linked with the rise in NSW modes which lack permanence and may come with fewer tied benefits than traditional, permanent full-time work.

Redundancy, re-training and a greater emphasis on self-reliance lead some workers to take risks in order to remain in or return to employment. Risk-taking has become a survival strategy. Legal Theory attempts to provide answers to questions about responsibility and risk, equality and justice. Risk, viewed as a choice-making resource, plays an important part in establishing responsibility. The burden of responsibility is a matter sometimes in dispute when NSWs attempt to seek redress after suffering harm at work.

The acid test of the law's efficacy in practice is to examine the experience of individuals working in NSW situations. As was concluded in Chapter 2, modern health and safety law is in a better position to protect workers than it has been since the first great law reforms of the 19th and early 20th centuries. Having said this there is a caveat: such is the nature of NSW that there might be gaps in the safety net through which some workers might fall under particular circumstances. Thus it was realized that further empirical research in this area would be desirable, to supply the deficit in the existing literature on the changing nature of work and its effect on health and safety at work. Therefore, qualitative and quantitative studies were conducted, as was extensively considered in Chapter 6. This included self-completion questionnaires and semi-structured interviews.

7.2 Health and Safety Law and NSWs

In Chapters 4 and 5 it was shown that extensive changes have taken place in the development of health and safety law since the nineteenth century. Legal interventions began with provisions under the criminal law, before the civil law achieved an increasingly comprehensive coverage of the many new sets of circumstances in which workers found themselves. Among these was the HSWA 1974 which has provided a new approach that applies to all workplaces. It also attempts to encourage all those at work to take responsibility for occupational health and safety by imposing general duties on employers and the self-employed, regarding these matters. However, most health and safety regulations, including the HSWA 1974, generally use the term 'employees' as they refer to the employer's duties. As it was established in Chapter 3, the employment status of NSWs who do not have an employment contract is uncertain. The following recommendation may be worth considering:

1. Areas of law relating to health and safety need to refer clearly to workers on non-standard work arrangements which, presently, is not the case. Although much of the UK current health and safety legislation aims, in theory, to cover all those at work and all forms of employment, a difference can still be found between standard full-time permanent workers and NSWs in many aspects such as control over the working

conditions, training and health and safety coverage, as has been shown in some case-law (examined in Chapters 3, 4 and 5 of this thesis).

The EU law was studied in this research as an essential part of the health and safety law in the UK (Chapter 4). It aims to provide a higher level of protection to all those at work including NSWs by imposing more strict liability on employers rather than the qualified liability provided by use 'reasonable practicability' under most of the UK health and safety legislation. However, the two different approaches have proved to be controversial in a number of recent cases where workers claimed that the level of protection is higher than 'reasonably practicable', especially as the legislation in question was enacted in order to implement the EU law. In the long run, this raises the question about the enforcement of such regulations, the effect on NSWs and their position when they attempt to make claims. In every situation relating to health and safety the law is, of course, useless until it is seen to be enforced. Therefore, it is recommended that:

2. Recent calls by Lofstedt (2011) for the eschewing of strict liability (EU) in favour of the UK's elastic approach ('reasonable practicability') may be ill-advised. Perhaps a more useful suggestion would be to retain and strengthen strict liability in order to assist NSWs who would, under this interpretation find it easier to prove their claims.

NSW constitutes a prominent feature of the changing nature of employment relationships and a major challenge to health and safety law. It is just and fitting that NSWs be adequately protected and provided for because they are the solution to the problems posed by the emergence of the new forms of industries, and by the economic difficulties encountered by employers and self-employed. Most small and medium-sized businesses cannot afford full-time employees and yet must staff their premises or outsource their commodity supplies. Their only viable option is to employ on a part-time basis. If efficiency is to be maintained and businesses to thrive, workers must be well provided for in order that they may remain with their employment.

7.3 Further Research

Although the empirical work in Chapter 6 did not generally confirm the hypothesis this does not disguise the fact that NSW makes the application of health and safety law very difficult because in some ways the NSWs relationship is going to be less managed. In addition, the findings reveal interesting facets, considering some areas where some NSWs such as part-timers seemed to be found in a less advantageous situation compared with other forms of employment. For example, part-time nurses and school workers reported that they had not had follow-up training when things changed in their workplaces. On account of this, they turned out to be more vulnerable in health and safety terms. The hypothesis in this study, as has been said, was not centred solely on economic factors, as indeed the results of the empirical work showed: those socio-economic factors had influence on the working situation not only for NSWs but also for standard workers. For example, one permanent full-time female employee from Cardiff had suffered from depression and stress due to bullying and sexual harassment at work. This shows that besides the possible exposure to physical hazards at work, gender has a significant impact on women s' health. This points to the social influence of work on health generally. This was covered in detail in Spring-Summer "Health and Safety at Work Magazine", issued by the European Trade Union Institute (Artazcoz, Cortes and Borrell, 2011). This study argued that although today's workplace reality has changed, yet the reality of women at work is still worrying.

"The combination of gender and social inequalities takes its greatest toll on the physical and psychological health of women on the bottom rungs of the job ladder."
Artazcoz, Cortes and Borrell (2011, p.21)

Furthermore, the quantitative and qualitative research showed that many women decided to work part-time, in order to balance job and family demands. This may have, in the long run, negative effects on the health and well-being of those women as they are juggling work with and their family responsibilities. Some of the findings concerning women in this study were surprising. For instance, some interviewees who work full-time would rather work part-time but are prevented from doing so by the consideration that working part-time, they will be paid less and so will be unable to pay for their childcare.

For example, Mrs T of Cardiff, who is a full-time employee, feels sometimes overloaded but she has not had any time off despite the potential impact on her health of her situation. This has interesting implications for the direction of future research. Thus, further research into many aspects of the working conditions would be beneficial, to understand how such workers, either standard or NSWs, might be found in a disadvantaged position at work. This could be coupled with further research that covers wider areas than South Wales alone.

Spreading the research into other rural and urban areas in the UK, may help in the understanding of the circumstances in which NSWs could be found. Cost and time constraints were influential in the decision to confine this study to the areas dealt with (Chapter 6). Moreover, there is a general assumption that part-time jobs are segregated into a narrower range of occupations than full-time jobs and are typically lower-paid, lower status: such as Sales, Catering and Cleaning, which proved to be so for many part-time participants in this study. This does not hide the fact that many part-timers, especially men, tend to be found in high-profile jobs such as academic occupations (Lecturers and Teachers), or in the Health Services (such as Doctors and Nurses). As has been discussed in Chapter 6, the quantitative research showed that, in the case of health and safety issues, standard workers represented by full-time permanent employees seem to have a higher incidence of accidents and or/ill-health than NSWs. However, among this group of workers, women appeared to suffer more than men who are employed in this category. Out of 31 full-time permanent employees who had suffered from accidents and/or ill-health, 19 were women who had had such an experience. One possible explanation for this could be that women who work full-time are often trying to juggle the full-time job with family commitments.

Other interesting findings of the empirical research were those related to the gender of workers. As was explained in Chapter 6, gender plays an important part in defining the workforce. According to the Labour Market Statistics, (13 April 2011), the majority of part-time workers in the UK are women and this matched with the outcome of this research because a large number of the respondents, who work part-time, according to the postal questionnaires, were women.

However, when it comes to the self-employed, the vast majority were male. The main occupations of those who were self-employed were those requiring physical strength including the Electrical Contractor, the Shift Work and the Director of his own roofing company. As well as investigating some important aspects at work which can reflect the quality of a job in terms of health and safety, this research also aimed to discover workers' responses when accidents and ill-health occurred. Therefore, it was important to consider whether workers tended to report their accidents and/or ill-health to their employers and whether they considered seeking advice to pursue legal action following such accidents and/or ill-health. It was found that workers, whether from standard or non-standard groups, who had suffered an accident and/or ill-health, did not report that to their employers.

7.4 The Way Forward

The empirical research of this thesis showed that there has been great improvement in health and safety at work and this becomes evident in every aspect of health and safety including risk assessment, safety training and access to safety policy. These aspects are paramount at most workplaces in the UK. This can be seen by the low number of workers from both groups i.e. full-time permanent employees and NSWs in various forms, in the quantitative research, who had suffered from accidents and/or ill-health. However, it must be said, considering the number of full-time permanent employees and the main categories of NSWs, i.e. part-time and self-employed, who suffered from accidents and/or ill-health, despite their suffering, the majority of those workers refrained from reporting their bad experience at work to their employers and did not consider pursuing advice for legal action. Furthermore, even when some of those workers reported their accidents and/or ill-health to their employers, they were either unsatisfied about the way their employers dealt with that, or they were afraid to seek advice for legal action as they "could lose their jobs". Additionally, the qualitative research of this study has shown that NSW was considered desirable by many male and female workers as a positive way of working. For example, one self-employed worker who had suffered from stress-related anxiety left his post as a full-time permanent employee to be self-employed. He said, "I have left my post to be self-employed which is not easy, financially challenging but my mental and physical health have improved".

This was also the case for many part-time workers, particularly female workers, as has been shown in Chapter 6. It all refers to the changes in attitudes in relation to the employment relationships and the continuous growth in the incidence of NSW in the UK. That, to some extent, might also explain the growing number of legal measures which are designed to provide further protection to those employed in part-time employment and under fixed-term contract which the thesis has extensively reviewed in Chapter 4. The research shows that a considerable number of women can now be found in this type of NSW, particularly, in nursing and home care. This increase in female workers, either in part-time or self-employment, generally contributes to the overall rise of NSW in the UK over the last three decades. The thesis has shown that the significant changes which have taken place in the world of work bring new challenges with regard to workers' health and safety that are different from those usually associated with work. It must be acknowledged that the level of protection has significantly increased since new rights have been introduced since the 1990s which apply to NSWs. However, there is still a gap in the protection afforded to those who lack the legal status of an employee, as is the case of many NSWs. What, one might argue, has that to do with the vulnerability of NSWs? This was well-illustrated by a number of recent examples of case-law that involved NSWs and which were extensively reviewed in Chapters 3 and 5.

7.5 Reflections and Recommendations

Broadly speaking the aims of this study were met and conclusions drawn, providing insights into the way changes in law have affected workers. The hypothesis was not upheld by empirical evidence but given the exploratory nature of the research, useful knowledge was acquired. A major finding was that the relationship between the law and workers in general is more complex than was expected. Having considered the case of NSWs in this thesis at different levels, more policies are still needed in order to improve and increase the awareness of the situation of NSWs. This would be needed, particularly, in the current economic situation in the UK which increases its reliance on the different forms of NSW. With the continuous changes in the world of work new hazards are faced by workers which will need, in addition to the existing prevention and risk tools, new strategies. This was confirmed by the ILO in one of its recent reports about hazardous work (2011, P.1) which was referred to in Chapter 1.

“...the traditional hazard and risk prevention and control tools may be still effective but they need to be complemented by prevention strategies to anticipate, identify, evaluate and control hazards arising from the constantly evolving world of work which itself may be introducing new hazards.”

In addition, a more effective and better enforcement system is required not only in relation to the employment rights of NSWs but also the right of all those at work. Moreover, more resources for the enforcement authorities need to be in place. This was also recently raised among other health and safety concerns in Professor Ragnar El Lofstedt's Review.

“Despite the significance improvements made, there continue to be concerns over inconsistency in the implementation of health and safety regulation across local authorities...The current regulatory arrangements generate an artificial targeting of enforcement activity across the board.” (Lofstedt's (2011, p. 5).

The independent review of health and safety legislation by Lofstedt also considered issues some of which have been explored in this thesis. Among them is the scope and application of health and safety regulations, particularly those regarding the employer's duties. The Review raised the issue of confusion surrounding the application of the law because of the wording of regulations. In this context, the Review gave an example about the standard of protection required by the different health and safety regulations. This was also discussed in Chapter 5 of this research, concerning the employer's liability. Chapter 5 stressed the need to provide clear direction and guidance in order for the courts to establish their decisions on claims brought before them. This issue came out in Lofstedt's Review as he considered the different requirements and duties of employers under the various health and safety regulations: “... in some cases there is a need to clarify what the regulations require, either through reviewing the wording of regulation or through improved guidance” Lofstedt Review (November 2011, p. 3). In line with this, the Lofstedt Review re-examined the on-going concern about which approach – the EU ‘strict liability’ approach or the UK's ‘reasonable practicability’ approach - should be applied in enforcing the different health and safety legislation.

The long-standing approach of the UK ‘so far as is reasonably practicable’ was hailed in the Lofstedt Review as the best way of enforcing the law fairly for both the employer and business. Furthermore, the Review criticized the requirements for strict liability, in the various health and safety legislation that originated from the EU, and accused the regulations of increasing the cost to businesses: “According to one study, 41 of the 65 new health and safety regulations introduced between 1997 and 2009 originated in the EU, and EU Directives accounted for 94 per cent of the cost of UK health and safety regulation introduced between 1998 and 2009” Lofstedt Review (November 2011, p.4). The Lofstedt Review, a year after the Lord Young Report in 2010, indicates the on-going concern about health and safety and the continuous need to ensure an optimum level of protection to all individuals, including employers, employees and business. The call to consolidate health and safety legislation is not a new one and it was raised by the Robens Report in 1972. The reasons for the consolidation might vary slightly from 1972 to 2011 but at the core, both were from a business perspective: “The review is business focussed and influenced, not ‘people focussed’ in that there is no discussion of emerging risks, people especially at risk, e.g. the older, younger, disabled, pregnant or non-standard workers” Leighton (2011, p.3). The Lofstedt Review controversially raised a question of whether the self-employed should be included in health and safety legislation: “A key question for many is whether the self-employed should be included in health and safety legislation...I believe there is a case for exempting those self-employed whose work activities pose no potential harm to others” Lofstedt (November 2011, p. 3). This raises a concern about not only the self-employed being excluded from the protection by the various pieces of health and safety legislation but about the other forms of NSWs such as casual and temporary workers:

“Somewhat controversially, the Review recommends that self-employed, ‘whose work activities pose no potential harm to others’ should be excluded from the regulatory framework. This is controversial because many self-employed work in construction and agriculture where there are high accident rates. Much will depend on how ‘low risk’ is interpreted ...The change would apply to consultants, contractors, interim managers etc., but what of the ‘casuals’, on call and other groups often also treated as self-employed?” Leighton (2011, p. 2).

The reviews from 2010 and 2011 reflect the importance of the present research because the reviews voice the same concerns. Should regulations be set in stone, or should they be minimal and some leeway be left to employers, to tailor regulations to the particular need of businesses? The question still remains: how much legislation is sufficient and how should it be applied?

The present study has sought to examine these concerns with the help of those who are directly affected by hazards and the consequences of the manner in which legislation is currently interpreted. The study has also thrown into sharp relief the fact that employment relationships continue to mutate and that health and safety law is faced with a continuing challenge to meet the constantly changing needs of new businesses as well as to respond to the innovations in traditional ones. Another symptom of the changing world of work is that NSW itself has altered with the advent of the computer age and globalization. Hazards which existed in the past have been replaced, to a great extent, with new ones. This is yet another challenge for health and safety legislators as they attempt to meet the needs of the workers concerned.

Bibliography

Books:

Aglietta, M. (1979) *A Theory of Capitalist Regulation: the US Experience*. London and New York: Schocke Books.

Atiyah, P. S. (1997) *The Damages Lottery*. Oxford: Hart Publishing.

Barrett, B. and Howells, R. (1997) *Occupational Health and Safety Law*, 3rd edn. London: Pitman Publishing.

Bartrip, P. W. (1983) *Individualized: Institutionalized Individualism and its Social and Political Cnsequences*. London: Sage.

Blaxter, L. Hughes, C. and Tight, N. (2006) *How to research*. Berkshire. Open University Press.

Boyer, R., (1990) *The Regulation School: A critical introduction*. New York: Columbia University Press.

Bryman, A. (2008) *Social Research Methods*. 3rd edn. Oxford: Oxford University Press.

Carson. G. (1974) *Symbolic and Industrial Dimensions of Early Factory Legislation: A Case Study in the Social Origins of Criminal Law*. London: Heinemann.

BIBLIOGRAPHY

Casey, B. (1988). *Temporary Employment, Practice and Policy in Britain*. London: Policy Studies Institute.

Cotter, B. and Bennett, D. (2009) *Munkman on Employer's Liability*, 15th edn. London: LexisNexis.

Delsen, L. (1995) *Atypical Employment: an International Perspective, Causes, Consequences and Polic*. Netherlands: Wolters-Noordhoff.

Denzin, K. N. and Lincoln, S. Y. (2008) *Collecting and Interpreting Qualitative Materials*. London: Sage Publications Ltd.

Felstead, A. Gallie, D. and Green, F. (2002) *Work and Skills in Britain 1986-2001*. Nottingham: DfES

Field, A. (2009) *Discovering Statistics Using SPSS*. 3rd. edn. London: Sage Publications Ltd.

Fielden, J. (1969) *The Curse of the Factory System*. 2nd edn. London: Frank Cass and Co Ltd.

Fletcher, J. and Harrison, C. (2009) *Birth and Growth of Industrial England 1714-1867*. England: Harcourt Brace College Publishers.

Fudge, J. and Owens, R. (2006) *Precarious Work, Women, and the New Economy: The Challenge to Legal Norms*. Oxford: Oxford & Portland Oregon.

Gallie, D. White, M. Cheng, Y. and Tomlinson, M. (1998) *Restructuring the employment relationship*. Oxford: Clarendon Press.

Gunningham, N. and Johnstone, R. (1999) *Regulating workplace safety: system and sanctions*. Oxford: Oxford University Press.

Handy, C. (1984) *The future of work: a guide to a changing society*. Oxford: Blackwell.

Hendy, J. and Ford, M. (2009) *Munkman on Employer's Liability*. 15th edn. London: Butterworths.

Henriques, R. Q. Ursula. (1971) *The Early Factory Acts and their Enforcement*. London: The Historical Association.

Horsey, K. and Rackley, E. (2011) *Tort Law*. 2nd edn. Oxford: Oxford University Press.

Hunter, J. and Ralston, I. (2009) *The archaeology of Britain: an introduction from the earliest times to the twenty-first century*. 2nd edn. London: Routledge.

Hutchins, B. L. and Harrison, A. (1911) *A History of Factory Legislation*. London: P.S Kin & Son.

Kloss, D. (2010) *Occupational Health Law*. 5th edn. Oxford: Blackwell Publishing.

BIBLIOGRAPHY

Kvale, S. (1996) *Interviews: An Introduction to Qualitative Research Interviewing*. London: Sage Publications Ltd.

Leighton, P. Syrett, M., Hecker, R. and Hollard, P. (2007) *Out of the Shadows: Managing Self-employed, Agency and Outsourced Workers*. Oxford: Butterworth Heinemann.

Leighton, P. and Syrett, M. (1989) *New Work Patterns, Putting Policy into Practice*. London: Pitman.

Lunney, M and Oliphant, K. (2008) *Tort Law: Text and Materials*. 3rd edn. Oxford: Oxford University Press.

Marshall, D. (1973), *Industrial England, 1776-1851*. London: Routledge & Kegan Paul Ltd.

McCann, D. (2008) *Regulating flexible work*. Oxford: Oxford University Press.

More, C. (1989) *The Industrial Age, Economy and Society in Britain 1750-1985*. London: Longman Publishing.

Picciotto, S. and Campbell, D. (2002) *New Direction in Regulation Theory*. Oxford: Blackwell.

Pole, C. and Lampard, R. (2002) *Practical Social Investigation Qualitative and Quantitative Methods in Social Research*. Harlow: Pearson Education.

BIBLIOGRAPHY

Sargeant, M. and Giovannone, M. (2011) 'Vulnerable Workers: Health, Safety and Well-being', in Barrett, B. and Sargeant, M. (ed.) *The Health, Safety and Well-being of Vulnerable Workers*. Gower: Italy, pp. 1-20.

Selwyn, N. (2011) *Selwyn's Employment Law*. Oxford: Oxford University Press.

Smith, I. T. (2000) *Health and Safety: The Modern Legal Framework*. 2nd edn. London: Butterworths.

Steele, J. (2004) *Risks and Legal Theory*. Oxford and Portland Oregon: Hall Publishing.

Thomas, M. W. (1948) *The Early Factory Legislation, A Study in Legislative and Administrative Evolution*. 1st edn. London: The Thames Bank Publishing Company Limited.

Watson, P. (2009) *EU Social and Employment Law: Policy and Practice in an Enlarged Europe*. Oxford: Oxford University Press.

Weir, T. (2006) *An introduction to Tort Law*. 2nd edn. Oxford: Oxford University Press.

Journal Articles

Ayton, A. and Daniell, W. (1814-1825), 'A Voyage Round Great Britain Undertaken Between the Years 1813 and 1823 by Richard Ayton and William Daniell', 8 vols. (1814-1825), vol.II, pp. 155-6.

Barrett, B. and James, P. (1988) 'Safety System: Past, Present - and Future?' *Industrial Law Journal*, 17 (1), pp. 26-40.

Beck, U. C. (2002) 'The Regulation of Health and Safety in Britain: From Old Labour to New Labour', *Industrial Relations Journal*, 31 (1), pp. 35-48.

Beck, M. and Woolfeson, C. (2000) 'The Regulation of Health and Safety in Britain: From Old Labour to New Labour', *Industrial Relations Journal*, 31 (1), pp. 35-48.

Bell, M. (2011) 'Achieving the objectives of the part-time work Directive? Revisiting the part-time workers regulations', *Industrial Law Journal*, 40(3), pp. 254-279.

Conley, H. (2008) 'The nightmare of temporary work: a comment on Fevre', *Work, Employment and Society*, 22(4), pp. 731-736.

Cordova, E. (1986) 'From full-time wage employment to atypical employment: A major shift in the evaluation of labour relations?', *International Labour Review*, 125(6), pp. 641-657

Cummings, K. and Kreiss, K. (2008) 'Contingent workers and contingent health: Risks of a modern economy', *Journal of the American Medical Association*, 299 (4), pp. 448-450.

BIBLIOGRAPHY

Doherty, M. (2009) 'When the working day is through: the end of work as identity?' *Work, Employment and Society*, 23(1), pp. 84-101.

Doran, N. (1996) 'From Embodied 'Health' to Official 'Accidents': Class, Codification and British Factory Legislation' *Social and Legal Studies*, 5 (4), pp. 523-546.

Felstead, A. Krahn, H. and Powell, M. (1999) 'Young and old at risk, comparative trends in "non-standard" patterns of employment in Canada and the United Kingdom', *International Journal of Manpower* 20 (5), pp. 277-295.

Ferrari, F. (1994), 'Donoghue v. Stevenson's 60th Anniversary', *Annual Survey of International and Comparative Law*, 1 (1), pp. 81-89.

Fredman, S. December (2004) 'Women at work: The broken promise of flexicurity', *Industrial Law Journal*, 33 (4), pp. 299-319.

Gash V. (2008) 'Preference or constraint? Part-time workers' transitions in Denmark, France and the United Kingdom', *Work, Employment and Society*, 22 (940), pp. 655-674.

Howes, V. (2009) 'Duties and liabilities under the Health and Safety at Work Act 1974: a step forward', *Industrial Law Journal*, 38 (3), pp. 308-317.

Howes, V. (2007) 'Liability for breach of statutory duty- is there a coherent approach?', *Journal of Personal Injury Law*, Issue 1/07, pp. 1-14.

Howes, V. 28 November (2003) 'New civil action against employers', *The New Law Journal*, 153 (7106), 1794.

James, S. T. April (2009) 'Whatever happened to Regulation theory? The Regulation approach and local government revisited', *Policy studies*, 30(2), pp. 181-201.

James, P. (1992) 'Reforming British Health and Safety Law: a framework for discussion', *Industrial Law Journal*, 21 (2), pp. 83-105.

Kalleberg, A. (2000) 'Non-standard Employment Relations: Part-time, Temporary and contract Work', *The Annual Review of Sociology*, (26), pp. 341-365.

Kent, K. February (2009) 'Employment: Changes over 30 years', *Economic and Labour Market Review*, 3 (2), pp. 30-36.

Koukiadaki, A. (2009) 'Case law developments in the area of fixed-term work', *Industrial Law Journal*, 38(1), pp. 89-100.

Lee, M. (2011) 'Safety, Regulation and Tort: Fault in Context', *Modern Law Review*, 74 (4), pp. 555-580.

Leighton, P. and Wynn, M. (2011) 'Classifying employment relationships - more sliding doors or a better regulatory framework?', *Industrial Law Journal*, 40(1), pp. 5-44.

Lewchuk, W. Clarke, M. and De Wolff, A. September (2008) 'Working without commitments: precarious employment and health', *Work, Employment and Society*. 22 (3), pp. 387-406.

BIBLIOGRAPHY

Lewis, N., (1975) 'Recent Legislation: Health and Safety at Work', *Industrial Law Journal*, 4 (1), pp. 34-37.

Purcell, J. Purcell, K. and Tailby, S. December (2004) 'Temporary Work Agencies: Here Today, Gone Tomorrow', *British Journal of Industrial Relations*, 42 (4). pp. 705-725.

Robinson, M. Smallman, A. (2006) 'The contemporary British workforce: a safer and healthier place?' *Work, Employment and Society*, 20 (1) pp. 87-107.

Strauss, K. (2010) 'Challenging hegemonic deregulation? The UK Gangmaster Licensing Authority as a model for regulation of casual work', Working Papers in Employment, *Work and Finance*, WPG 09-18 [Onlin] Available at: <http://www.geog.ox.ac.uk/research/transformations/wpapers/wpg09-18.pdf> (Accessed: 25/6/2012).

Stone, V. K., (2006) 'Legal protections for atypical employees: Employment Law for works without workplaces and employees without employers', *Berkeley Journal of Employment and Labour Law*, 27 (2), pp. 253-284.

Official Reports

Artazcoz, L. Cortes, I and Borrell, C. (2011), *Workload'' overburdens women's health*, European Trade Union Institute Brussels: European Trade Union Institute's Health and Safety at Work Magazine, Spring-Summer, pp. 21-25.

Atkinson, J. (1985) *Flexibility, Uncertainty and Manpower Management*. IMS Report No 89. Brighton: Institute for Employment Studies.

Atkinson, J. (1984) *Manpower Strategies for flexible organisations*. London: Institute of Personnel Management.

Bardasi, E. and Francesconi, M. (2003) *The impact of atypical employment on individual wellbeing: Evidence from a panel of British workers*, Colchester: the Institute for Social and Economic Research, Working Papers Number 2003-2. Colchester: University of Essex.

Broughton, A. Biletta, I. and Kullander, M. March (2010) *Flexible forms of work: 'very atypical' contractual arrangements*, Ireland: Dublin, European Foundation for the Improvement of Living and Working Conditions.

Buffet- A. Marie and Priha, E. (2009) *Workforce diversity and risk assessment: ensuring everyone is covered*. European Agency for Safety and Health at Work, Belgium [Online] Available at: <http://osha.europa.eu/en/publications/reports/TE7809894ENC> (Accessed: 13 March 2009).

Burchell, B. Deakin, S and Honey, S. (1999). *The employment status of individuals in non-standard employment*. London: Department of Trade and Industry.

BIBLIOGRAPHY

Donaghy, R. July (2009) '*One Death is too many: Inquiry into the Underlying Causes of Construction Fatal Accidents*', Cm 7657. [Online] Available at:
<http://www.dwp.gov.uk/docs/one-death-is-too-many.pdf> (Accessed: 14 October 2010).

Edwards, P. (2006) '*Non-standard work and labour market: re-structuring in the UK*', Rome. 23 February. Rome. Available at:
www2.warwick.ac.uk/fac/soc/wbs/research/irru/publications/recentconf/pe_rome.pdf
(Accessed: 26 November 2011)

European Agency for Safety and Health at Work, (2011) *Stress*. [Online]. Available at:
http://osha.europa.eu/en/topics/stress/index_html (Accessed: 11 May 2011).

European Agency for Safety and Health at Work, (2009) *Working environment information, Workforce diversity and risk assessment: Ensuring everyone is covered*. [Online]. Available at: <http://osha.europa.eu/en/publications/factsheets/87> (Accessed: 11 May 2009).

European Agency for Safety and Health at Work, (2007) *Young workers: Facts and figures*, Luxembourg: Office for Official Publications of the European Communities. Available at: <http://osha.europa.eu/en/publications/reports/7606507> (Accessed: 12th June 2010)

European Agency for Safety and Health at Work, (2007) *Expert forecast on emerging psychosocial risks related to occupational safety and health*, [Online]. Available at: <http://osha.europa.eu/en/publications/factsheets/74> (Accessed: 20 June 2008).

European Association for Injury Prevention and Safety Promotion, (2011) *Third European Conference on Injury Prevention and Safety Promotion*, Budapest: 16-17 June. Budapest.

European Foundation for Improvement of Living and Working Conditions, (2010) *Changes over time-first findings from the fifth European Working Conditions Survey*, [online].

BIBLIOGRAPHY

Available at: <http://www.eurofound.europa.eu/surveys/ewcs/2010/training.htm> (Accessed: 4th June 2010).

European Foundation for Improvement of Living and Working Conditions, (2005-2006) *Temporary agency work and collective bargaining in the EU* [online]. Available at: <http://www.eurofound.europa.eu/pubdocs/2008/99/en/4/EF0899EN.pdf> (Accessed: 4th June 2009).

European Working Conditions Survey (2010) *EWCS 2010 - Skills, training and career prospects* [Online] Available at: <http://www.eurofound.europa.eu/surveys/ewcs/2010/training.htm> (Accessed: 5 October 2011).

Great Britain. Department of Business Innovations and Skills, May (2011) *Agency Workers Regulations: Guidance*. [Online]. Available at: <http://www.bis.gov.uk/assets/biscore/employment-matters/docs/a/11-949-agency-workers-regulations-guidance.pdf> (Accessed: 20 July 2010).

Great Britain. Department of Work and Pension, July (2012) *Accessing compensation – Supporting people who need to trace Employers' Liability Insurance Government response to consultation* [Online]. Available: <http://www.dwp.gov.uk/docs/elci-compensation-consultation-response.pdf> Accessed: 20 August 2012).

Great Britain: Health and Safety Executive, February (2012) *Five steps to risk assessment* [Online]. Available at: <http://www.hse.gov.uk/pubns/indg163.pdf> (Accessed: 24 May 2012)

BIBLIOGRAPHY

Great Britain. Health and Safety Executive (2011) *Homeworkers. Advice for employers* [Online]. Available at: <http://www.hse.gov.uk/migrantworkers/employer.htm> (Accessed: 20 June 2011).

Great Britain. Health and Safety Executive (2009-2011) *Employing workers from overseas: Guidance for employers in agriculture and food processing*. [Online]. Available at: www.hse.gov.uk/pubns/indg414.pdf (Accessed: 17 May 2012)

Great Britain: Health and Safety Executive, *Injuries, Diseases and Dangerous Occurrence Regulation* (2009-2010) [Online]. Available at: <http://news.hse.gov.uk/category/topic/riddor/> (Accessed: 15 September 2010).

Great Britain Health and Safety Executive (2009-2010) *National Statistics*, [Online]. Available at: www.hse.gov.uk/statistics/overall/hssh0910.pdf (Accessed: 26 November 2011)

Great Britain. Health and Safety Executive (2008-2009) *National Statistics*, [Online]. Available at: www.hse.gov.uk/statistics/overall/hssh0809.pdf (Accessed: 20 May 2009).

Great Britain. Health and Safety Executive, (2007-2008) *Self-reported work-related illness and workplace injuries in 2007-2008*. [Online]. Available at: <http://www.hse.gov.uk/> (Accessed: 23 June 2008)

Great Britain: Health and Safety Executive, Statistics, (2006) *Health and Safety Executive, Revitalizing Health and Safety, Safety Statement*, Department of the Environment, Transport and the Regions, June 2000, London

BIBLIOGRAPHY

Great Britain: Health and Safety Executive, *Horizon Scanning Intelligence: Group Short Report; Flexible Working and Employment Patterns* (2006) [Online] Available at: <http://www.hse.gov.uk/horizons/precwrkreport.pdf> (Accessed: 28 March 2009)

Great Britain. Health and Safety Executive, *Health and safety regulation...a short guide*, August 2003, PP1-7 [Online]. Available at: www.hse.gov.uk/pubns/hsc13.pdf (Accessed: 12 March 2009)

Great Britain. Health and Safety Executive, *Reducing Risks: Protecting People, HSE's decision-making process*, (2001) [Online]. Available at: www.hse.gov.uk/risk/theory/r2p2.pdf (Accessed: 20 July 2009)

Great Britain. Health and Safety Executive, *Thirty years on and looking forward*, October (2000), [Online]. Available at: <http://www.hse.gov.uk/aboutus/reports/30years.pdf> (Accessed: 12 September 2009)

Great Britain. Equal Opportunity Commission, (2006), *Facts about Men and Women in Great Britain*, [online]. Available at: http://www.unece.org/fileadmin/DAM/stats/gender/publications/UK/Facts_about_W&M_GB_2006.pdf (Accessed: 26 November 2011)

Great Britain: Institute for Employment Studies, Report 294, (1995), *Women in the Labour Market, Two Decades of Change and Continuity*, Available at: <http://www.employment-studies.co.uk/pubs/summary.php?id=294> (Accessed: 5 June 2010)

BIBLIOGRAPHY

Great Britain: National Assembly for Wales, *Statistics*, (2010), [Online] Available at: <http://www.assemblywales.org/> (Accessed: 28th September 2011)

Great Britain: Office for National Statistics, January (2012), *Labour Market Statistics* [Online]. Available at: <http://www.ons.gov.uk/ons/publications/all-releases.html?definition=tcm:77-21589> (Accessed: 20 March 2011)

Great Britain: Office for National Statistics, *Labour Market Statistics*, April (2011) [Online]. Available at: <http://www.ons.gov.uk/ons/publications/all-releases.html?definition=tcm:77-21589> (Accessed: 29 May 2011)

Great Britain: Office for National Statistics, October (2010) *Labour Market Statistics* [Online]. Available at: <http://www.ons.gov.uk/ons/publications/all-releases.html?definition=tcm:77-21589> (Accessed: 12 November 2010)

Great Britain: Office for National Statistics, October (2009) *Labour Market Statistics* [Online]. Available at: <http://www.ons.gov.uk/ons/publications/all-releases.html?definition=tcm:77-21589> (Accessed: 12 November 2009)

Great Britain: Office for National Statistic, November (2008), *Labour Market Statistics*, [Online]. Available at: <http://www.ons.gov.uk/ons/publications/all-releases.html?definition=tcm:77-21589> (Accessed: 25 December 2008)

Great Britain: Office for National Statistics, August (2007) *Labour Market Statistics* Office for National Statistics. [Online] Available at: <http://www.ons.gov.uk/ons/publications/all-releases.html?definition=tcm:77-21589> (Accessed: 17 October 2007)

BIBLIOGRAPHY

Great Britain. The Department of Trade and Industry March (2006) *Employment status review*. [Online] Available at: <http://webarchive.nationalarchives.gov.uk/+/http://www.berr.gov.uk/files/file27471.pdf> (Accessed: 20 July 2008).

Great Britain. Trade Union Congress, (2008) *Commission on Vulnerable Employment, Hard Work, Hidden Lives*, the Short Report of the Commission on Vulnerable Employment, Available at: http://www.vulnerableworkers.org.uk/files/CoVE_full_report.pdf (Accessed: 20 September 2009)

Great Britain: Trade Union Congress, (2007) *Agency workers: Counting the cost of Flexibility*. Equality and Employment Rights Department, Available at: <http://www.tuc.org.uk/extras/sectorreport.pdf> (Accessed: 27 November 2009)

Great Britain: Trade Union Congress, March (2006) *Personal Injury Claims: Proposals for Change, TUC proposals for improving access to justice for claimants*, Available at: <http://www.tuc.org.uk/extras/pi-process.pdf> (Accessed: 23 March 2010)

Great Britain: Union of Construction, Allied Trades and Technicians, (2007-2008) *Small isn't Beautiful, Construction workers death 2007/08: Employer size and circumstance*, By the Centre for Corporate Accountability, Available at: <http://www.leighday.co.uk/LeighDay/media/LeighDay/documents/cca-ucatt-deaths.pdf?ext=.pdf> (Accessed: 11 October 2009)

Great Britain: University of Glamorgan, September (2011) *Code of Practice for Research Students* [Online]. Available at: <http://office.research.glam.ac.uk/forms/> (Accessed: 24 December 2011).

BIBLIOGRAPHY

Gregoire, D. (2012) *Barroso's stance on OSH is "A real slap in the face for European workers"* European Trade Union Institute's Health and Safety at Work Magazine, Autumn-Winter 2012, pp.6-9

Hakansson, K. and Isidorsson, T. (2005) *Temporary Agency Work: A comparison of the use of agency work in Sweden and the UK*, International Labour Conference, Glasgow, 21-23 March. Glasgow.

Health and Safety at Work Magazine, December (2010) *Work-related ill health is on the up, says HSE-news section.*

Hotopp, U. (June 2002) *Teleworking in the UK*, Labour Market trends, pp. 311.318

International Labour Organisation, (2011) *Programme on Safety and Health at Work and the Environment (Hazardous Work)*, [Online]. Available at: [http://www.ilo.org/safework/lang--en/index.htm](http://www.ilo.org/safework/lang-en/index.htm) (Accessed: 30 May 2011)

International Labour Office, May (2004) *On-call work and "zero hours" contracts*, Geneva, Information Sheet No.WT-15 [Online]. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_170714.pdf (Accessed: 9 June 2011)

International Labour Organisation, National Group on Homeworking, May (2008), *Homeworking: Convention: The case for UK ratification of ILO Convention 177 on Homework*, Leeds.

BIBLIOGRAPHY

Joyce, J. June (2011) *Safety for young employees at work, Third European Conference on Injury Prevention and Safety Promotion*, Budapest, 16-17 June. Budapest [Online] Available at:

<http://www.eurosafe.eu.com/csi/eurosafe2006.nsf/wwwVwContent/133rdeuropeanconferenceoninjurypreventionandsafetypromotion16-17june2011budapestgodollo.htm> (Accessed: 6 September 2011).

Kang, M. and Boutton-Woodson-A. (2008) *Visions of the industrial age, 1830-1914: modernity and the age of representation in Europe*. Ashgate: Aldershot-Burlington VT.

Kirby, P. September (2009) *Early Victorian Social Investigation and the Mines Commission of the 1842*. Number 66, Manchester Papers in Economic and Social History [Online] Available at:

<http://www.arts.manchester.ac.uk/subjectareas/history/research/manchesterpapers/files/fileuploadmax10mb,167481,en.pdf> (Accessed: 8 October 2011)

Leighton, P. December (2011) *Additional Materials for PEEL December 2011 (2): Major review of health and safety law-Lofstedt*, Published 28/11/2011, Edinburgh.

Legislative Comments, Employment, (2010) '*Equality Act 2010-new legislative framework*', *Health and Safety at Work*, 16 (10), pp. 1-3

Leschke, J. (2011) *Flexible working lives and pension coverage in Europe with a focus on women: Lessons to be learned by Germany*, Working Papers on the Reconciliation of Work and Welfare in Europe, Edinburgh: A Network of Excellence of European Commission's: Sixth Framework Programme [Online]. Available at:

BIBLIOGRAPHY

http://www.socialpolicy.ed.ac.uk/__data/assets/pdf_file/0017/61019/REC-WP_0111_Leschke_.pdf (Accessed: 30 April 2011)

Lofstedt, E. R. November (2011) *Reclaiming health and safety for all: An independent review of health and safety legislation*. Cm 8219, London: Department for Work and Pensions [Online]. Available at: <http://www.dwp.gov.uk/docs/lofstedt-report.pdf> (Accessed: 5th December 2011)

Lord Young. October (2010) *Common Sense; Common Safety*, [Online] Available at: http://www.number10.gov.uk/wp-content/uploads/402906_CommonSense_acc.pdf (Accessed: 24th September 2011)

McLaren, E, Firkin, P. Spoonley, P. Dupnis, A. De Bruin, A. and Inkson, K. (2004) *At the Margins: Contingency, Precariousness and Non-standard Work*, Labour Market Dynamics Programme, Albany and Palmerstone North 1-81.[Online] Available at: <http://lmd.massey.ac.nz/publications/At%20the%20Margins.pdf> (Accessed:21 October 2010)

Mouriki, A. 1994, *Flexible working: towards further deregulation of work, or escaping from stereotype?* Industrial Relations Research Unit, School of Industrial and Business Studies, University of Warwick

O'Hara, R. Williamson, Collins, A. and Higginson, D. 2004, *Health and safety of homeworking: Good practice case studies*, Prepared by Health and Safety Laboratory for Health and Safety Executive, Research Report 262.

Real History of Britain: Britain's Black Diamonds (2011) BBC Two Television, 8th September.

BIBLIOGRAPHY

Robens Report Committee on Safety and Health at work: Report of the Committee 1970/72.
Cmd: 5034

Rose, D. (2007) 'Firms fail to prevent 'avoidable death', *The Times*, Monday 29th October, p.11.

The Telegraph.co.uk, (2010) 'Part-time workforce at record levels', *The Telegraph*, 14th of July, Available at: <http://www.telegraph.co.uk> (Accessed: 12.10.2010).

Tucker, D. (2002) '*Precarious Non-Standard Employment- A Review of Literature*', Labour Market Policy Group, Department of Labour, Wellington.

Vogel, L. (2011) European Trade Union Institute, *Restructurings: workers' health at crisis point*, European Trade Union Institute's Health and Safety at Work Magazine, Autumn-Winter 2011. pp. 12-18

Vogel, L. (2004) *Occupational health: Eight priority action area for community policy*, European Trade Union Technical Bureau for Health and Safety [Online] Available at: <http://www.hse-bg.org/images/stories/HSE/UK-health-TU.pdf> Accessed: 28 September 2009.

Case law

Allison v London Underground Ltd [2008] EWCA Civ 7

Barker v Corus UK Ltd [2006] UK HL 20

Blyth v Birmingham Waterworks Co [1856] 11Exch 781

Bolton v Stone (1951 A.C. 850)

Bux v Slough Metals [1974] 1 All ER 262

Caparo Industrial plc v Dickman [1990] 2 A.C. 605

Carmichael & Anor v National Power plc [2000] I.R.L.R 43

Clark v Oxfordshire Health Authority [1998] I.R.L.R 125

Commission v UK [c-127/05]

Corr v IBC Vehicles Ltd [2008] UK HL 13

Cutler v Wandsworth Stadium Ltd [1949] AC 398

D v East Berkshire Community Health NHS Trust [2005] 2AC 373

Donoghue v Stevenson [1932] AC 562

Dragonfly Consulting Ltd v Revenue and Customs Commissioners [2008] S.T.I. 143

Fairchild v Glenhaven Funeral Service Ltd [2002] I.R.L.R 533

Fytche v Wincanton Logistics Plc [2004] UK HL 31

Garland v. British Rail Engineering Ltd [1983] 2 AC 751

Grant v Australian Knitting Mills Ltd [1936] AC 85

Grieves v FT Everard and Sons Ltd and others [2007] UK HL 39

Groves v Lord Wimborne [1898] 2 GB 402

James v London Borough of Greenwich [2008] I.R.L.R. 165

Jennings v Commission [2008] I.C.R. 988

Lane v Shire Roofing Co [Oxford] Ltd [1997] P.I.Q.R. P417

Kelly v WRN Contracting Ltd [1968] 1 WLR 921

McWilliams v Sir William Arrol (1962) 1 All ER 623

Muschett v HM Prison Service [2010] I.R.L.R. 450

Page v Smith [1996] 1 W.L.R 855

Paris v Stepney Borough Council [1951] A.C. HL 367

R v Cotswold Geotechnical (Holdings) Ltd [2011] EWCR Crim 1337

R v Holton [2010] EWCA Crim 934

R. v Pola (Shah Nawaz) [2009] EWCA Crim 655

Rice v Secretary of State for Trade and Industry [2007] EWCA Civ 289

Sharma v Manchester City Council [2008] I.R.L.R 36

Smith v Crossley Bros [1951] 95 Sol Jo 655

Smith v George Wimpey and Co Ltd [1972] 2 All ER 723

Stark v The Post Office [2000] EWCA Civ 64

Stepney v Borough Council [1951] A.C. HL. 367

Sutherland v Hatton [2002] I.R.L.R 263

Viasystems (Tyneside) Ltd Thermal Transfer (Northern) Ltd [2006] QB

Legislation and Regulations

Asbestos (Prohibitions) Regulations 1985, SI: 1985/910

Carcinogens (the Six) Directive 90/394/EEC

Conduct of Employment Agencies and Employment Businesses Regulations 2003, SI: 2003/3319

Control of Lead at Work Regulations 1980, SI: 1980/1248 (amendments in 1988, 1998 and 2002)

Control of Major Accident Hazards Regulations 1999, SI: 1999/743

Control of Substances Hazardous to Health Regulations 1988, SI: 1998/1657 (amendment 1999)

Corporate Manslaughter and Corporate Homicide Act 2007

Cotton Mills and Factories Act 1819

Council Directive of 1999 (1999/70/EC) of 28 June 1999-concerning the framework agreement on fixed-term work conducted by ETUC, UNCE and CEEP

Council (the Second) Directive 89/655/EEC Use of Work Equipment

Council Directive 89/391/EEC on the Introduction of Measures to Encourage Improvements in the Safety and Health of Workers at work “Framework Directive”

Council (the Third) Directive 89/656/EEC Use of Personal Protective Equipment

Council Directive 90/269/EEC Manual Handling of Loads

Council (the Fifth) Directive 90/270/EEC Display Screen Equipment

Council Directive 91/383/EEC of 25 June 1991 Supplementing the Measures to Encourage Improvement in the Safety and Health at Work of Workers with a Fixed Duration Employment Relationship or a Temporary Employment Relationship

Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisational of working time

LEGISLATION AND REGULATION

Council Directive 92/85/EEC of 19 October 1992 on the Introduction of Measures to Encourage Improvements in the Safety and Health at Work of Pregnant Workers and Workers who have recently given birth or are breastfeeding

Directive 2008/104/EC of the European Parliament of 19 November 2008 on temporary agency work

Disability Discrimination Act (DDA) 1995

Display Screen Equipment (the Fifth) Directive 90.270

Equality Act 2010

Employment Agencies Act 1973

Employers' Liability (Compulsory Insurance) Act 1969

Employers' Liability (Defective Equipment) Act 1969

Employment Rights Act 1996

European Community Act 1972

Factory Health and Morals Act of 1802

Factory Act 1833

Factory Act 1844

Factory Act 1874

Factory Act 1883

Factory and Workshop Act 1901

Factories Act 1937

Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, SI: 2002/2034

Fire Precautions Act 1971

Gangmasters (Licensing) Act 2004

LEGISLATION AND REGULATION

Health and Safety (Consultation with Employees) Regulations 1996, SI: 1996/1513

Health and Safety (Display Screen Equipment) Regulations 1992, SI: 1992/2792

Health and Safety at Work etc. Act 1974

Management of Health and Safety at Work Regulations 1992, SI: 1992/2051

Management of Health and Safety at Work Regulations (amendment) (MHSR) 1999, SI: 1999/3242

Manual Handling of Heavy Loads (the Fourth) Directive 90/269

Manual Handling Operations Regulations 1992, ST: No/ 2793

Mines Miscellaneous Health and Safety Provisions Regulations 1995, SI: 1995/2005

National Minimum Wage Act 1998

National Minimum Wage Regulations 1999, SI: 1999/584

Offshore Installation and Pipeline Works (First Aid) Regulations 1989, SI: 1989/1671

Personal Protective Equipment Regulations 1992, SI: 1992/ 2966

Personal Protective Equipment (the Third) Directive 89/656

Provision and Use of Work Equipment Regulations 1992, SI: 1992/ 2932

Report of Injuries, Diseases and Dangerous Occurrence Regulations 1995, SI: 1995/ 3163

Safety Representatives and Safety Committees Regulations 1977, SI: 1977/ 500

Workplace (the First) Directive 89/65

Work Equipment (the Second) Directive 89/655

Workplace (Health, Safety and Welfare) Regulations 1992, SI: 1992/3004

Working Time Regulations 1998: SI: 1998/ 1833

Glossary of Terms

ABI:	The Association of British Insurance
BIS:	Department for Business Innovation and Skills
CJEC:	The Court of Justice of the European Communities
DDA:	The Disability Discrimination Act 1995
DTI:	The Department of Trade and Industry
DWP:	The Department for Work and Pensions
EAT:	The Employment Appeal Tribunal
EC:	European Community
EEC	European Economic Community
EFILWC	European Foundation for Improvement of Living and Working Conditions
ELM:	The Employers' Liability Market
EOC:	Equal Opportunities Commission of the UK
ERA:	The Employment Right Act 1996
ETUC:	European Trade Union Confederation
ETUI:	European Trade Union Institute
EU:	The European Union
FTC:	Fixed-term contract
GLA:	Gangmasters (Licensing) Act 2004
HL:	House of Lords
HSC	Health and Safety Commission
HSE:	Health and Safety Executive

GLOSARY OF TERMS

HSWA Health and Safety at Work etc. 1974

ICR: Industrial Cases Report

LFS: Labour Force Survey

ILO: International Labour Office

I.R.L.R: Industrial Relations Law Report

Member States: The collective name for all countries who are member of the European Community

MHSWR: The Management of Health and safety at Work Regulations 1992

NSW: Non-standard work

NSWs: Non-standard workers

OECD: Organisation for Economic Cooperation Development

PPE: The Personal and Protective Equipment Regulations 1992

PUWER: The Provision and Use of Work Equipment Regulations 1992

RIDDR: Reporting of Injuries, Diseases and Dangerous Regulations 1995

The Council: The Council of the European Community

TUC: Trades Union Congress

UCATT: Union of Construction, Allied Trades and Technicians

UK: United Kingdom

Annexure

The Questionnaire

Questionnaire

I am a researcher at the University of Glamorgan, Wales. I am researching an important topic- that of health and wellbeing at work. I am looking at accidents and illness resulting from work. This is an important issue which may be relevant to you. I would like to know about your work experiences, including any work- related illness or injury which you may have suffered. The enclosed questionnaire requires only a few minutes of your time and your help will be invaluable to my research. I hope that it will lead to future improvements in working conditions because I am keen to make the results of my work available to policy and law-makers. I am counting on you to play your part in this venture. *As an added incentive a voucher for £25, for a supermarket of your choice will be sent to the first completed questionnaire drawn at random from all those who complete and return the questionnaire.*

This questionnaire has been devised to find out more about some aspects of working practice. Rest assured that all information will be treated as confidential and that no individuals will be identified. I would be grateful if you would take the time to complete this questionnaire. Pr-paid postage on the envelope is provided.

Thank you very much for taking the time to complete this Questionnaire. If you wish to contact me please feel free to do so.

Contact No: 01443482474

Email Address: salha2003@hotmail.com

A questionnaire for workers

For office use only

Please follow the instructions provided

1. Have you been in paid employment during the last two years? ☐ Yes ☐ No

1 ☐

If, Yes, please go to question 2

2. What is the length of time you have spent in your most recent job?

2.1 Under 6 months

☐

2 ☐

2.2 6 months to two years

☐

3 ☐

2.3 Over two years

☐

4 ☐

3. In what way do you work in your main or only job?

(You can tick more than one box)

3.1 Full-time permanent employee

☐

5 ☐

3.2 Part-time employee

☐

6 ☐

3.3 Fixed-term (Full-or Part-time)

☐

7 ☐

3.4 Seasonal or Casual

☐

8 ☐

3.5 Self-employed, e.g. freelance, partner, director, contactor

☐

9 ☐

3.6 Temporary agency worker

☐

10 ☐

3.7 On call, Stand by

☐

11 ☐

3.8 Other (Please explain)

☐

12 ☐

.....
.....
.....

4. What is your job, in terms to that main or only job? (e.g. Nurse, Driver, Teacher)

.....
.....
.....

13 ☐

5. Did your initial training include safety procedures? ☐ Yes ☐ No

6. Has there been follow-up/ongoing safety training since that time? ☐ Yes ☐ No

14 ☐

7. So far as you are aware, has your job been subject to a risk assessment?

15 ☐

☐ Yes ☐ No

8. Have you got access to the safety policy at your workplace?

☐ Yes ☐ No

16 ☐

If, Yes, have you read it.

☐ Yes ☐ No

17 ☐

9. Does your work require the use of safety equipment by you?

☐ Yes ☐ No

18 ☐

If, Yes, please describe briefly

19 ☐

.....
.....
.....

10. Has your work affected your health?

☐ Yes ☐ No

20 ☐

Please turn over

	<u>For office use only</u>
10. A. If, Yes, please explain the nature of the illness	21 <input type="checkbox"/>
10. B. How long have you been off work for any work-related illness/health problem in the last 2 years?	22 <input type="checkbox"/>
11. Have you had work-related accident that kept you off work for more than 3 days in the last 2 years? If, Yes, please specify	<div> <input type="checkbox"/> Yes <input type="checkbox"/> No </div> 23 <input type="checkbox"/>
12. Did you report your accident and/or ill health to your employer?	<div> <input type="checkbox"/> Yes <input type="checkbox"/> No </div> 24 <input type="checkbox"/>
13 Did you generally feel satisfied about the way your accident and/or ill-health were dealt with at the workplace?	<div> <input type="checkbox"/> Yes <input type="checkbox"/> No </div> 25 <input type="checkbox"/>
14. Did you seek advice to pursue legal action? If, No, was the reason any of the following	<div> <input type="checkbox"/> Yes <input type="checkbox"/> No </div> 26 <input type="checkbox"/>
14.1 I did not want to draw attention to myself	<div> <input type="checkbox"/> </div> 27 <input type="checkbox"/>
14.2 I did not know what to do	<div> <input type="checkbox"/> </div> 28 <input type="checkbox"/>
14.3 I did not know how the employer would react	<div> <input type="checkbox"/> </div> 29 <input type="checkbox"/>
14.4 I did not want any of my colleagues to get into trouble	<div> <input type="checkbox"/> </div> 30 <input type="checkbox"/>
14.5 Other (Please specify)	<div> <input type="checkbox"/> </div> 31 <input type="checkbox"/>
If, Yes, did you claim compensation following your accident or injury?	<div> <input type="checkbox"/> Yes <input type="checkbox"/> No </div> 32 <input type="checkbox"/>
15. Was the outcome of the legal action satisfactory to you?	<div> <input type="checkbox"/> Yes <input type="checkbox"/> No </div> 33 <input type="checkbox"/>
16. Are you male or female?	<div> <input type="checkbox"/> Male <input type="checkbox"/> Female </div> 34 <input type="checkbox"/>
If you have any other comments to make which you think might be of interest, please add them here.	35 <input type="checkbox"/>
Thank you for taking the time to complete this questionnaire. I am very keen to learn more about your workplace experiences and views on health and safety. So, would you be willing to talk to me either face to face or by telephone, on a strictly confidential basis? If so, would you kindly provide your contact details and suggest times when it would be convenient to have a short discussion.	36 <input type="checkbox"/>